

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

995

BRIEF FOR APPELLANT AND APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,026

DISTRICT OF COLUMBIA,

Appellant,

v.

NATIONAL PARKS ASSOCIATION,

Appellee.

On Petition For Review Of A Decision
Of The District Of Columbia Tax Court

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United States Court of Appeals
for the District of Columbia Circuit

FILED JUN 1 1970

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CLERK



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UNITED STATES COURT OF APPEALS
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No. 24,026

DISTRICT OF COLUMBIA,

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v.

NATIONAL PARKS ASSOCIATION,

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On Petition For Review Of A Decision
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BRIEF FOR APPELLANT DISTRICT OF COLUMBIA

STATEMENT OF ISSUES PRESENTED FOR REVIEW

In the opinion of counsel for the District of Columbia,
the issues presented herein are two:

1. Is appellee National Parks Association's headquarters building, for which real property tax exemption is sought, "used for purposes of public charity principally in the District of Columbia"?

This case has not previously been before this Court.

2. Is appellee National Parks Association an institution which is educational and scientific in nature, rather than charitable, and hence not entitled to an exemption of its headquarters building from District of Columbia real property tax?

REFERENCES TO RULINGS

1. "Opinion and Order", D.C. Tax Court Docket No. 2069, Opinion No. 1082, December 2, 1969, App. 36-73.
2. "Decision", D.C. Tax Court Docket No. 2069, December 9, 1969, App. 73-74.
3. "Order on Motion for Reconsideration", D.C. Tax Court Docket No. 2069, January 6, 1970, App. 79-80.

STATEMENT OF THE CASE

This is a proceeding to review a final decision of the District of Columbia Tax Court, based upon its Opinion and Order, Decision, and Order on Motion for Reconsideration, which declared erroneous an assessment of real property tax in the amount of \$2,706.00, made by the District of Columbia against appellee National Parks Association (hereinafter, "Association"). The decision of the Tax Court was entered on December 9, 1969. Subsequently, on December 17, 1969,

the District filed a "Motion to Make Separate Findings of Fact, to Vacate Decision in Favor of Petitioner, and for Entry of Decision in Favor of Respondent" (App. 74), which the Tax Court treated as a Motion for Reconsideration and denied on January 6, 1970. A petition for review by this Court of the final decision of the Tax Court was filed by the District on February 4, 1970 (App. 80).

The Association is the record owner of Lot 132, Square 153 in the District of Columbia, which is improved by a four-story-and-basement structure (App. 3, 4). The basement, the ground and second floors, and part of the third floor are utilized by the Association as its national headquarters (App. 13-14), with the remainder of the building vacant as of the time of hearing below (App. 33-34). The Association is a national membership organization concerned with the protection of this country's national parks and functions mainly through the publication of a monthly educational magazine (App. 7, 12). The Association's president described the Association and its magazine as being educational and scientific in nature, specifically stating that the purpose of the magazine "is to educate the public generally about the beauties of the National Park System

and the problems which it faces, including those in the District of Columbia." (App. 7, 12, 25).

Membership in the Association, which collects dues therefrom, numbered approximately forty thousand at the time of hearing below, of which "perhaps" two or three hundred resided in the District (App. 12, 14).

The Association also maintains a "Conservation Education Center" at the federally-owned Smithsonian Institution, where lectures are given and films are shown on conservation topics (App. 7). Occasionally, field trips are made (App. 7). The lectures and films are open to the public without charge (App. 20, 23). One means of informing the public about the lecture-and-film programs is by distributing notices thereof through the several public school systems of the District and the nearby Maryland and Virginia areas (App. 20-22). In addition, advertisements are placed in the media, and notices of programs are sent to those who have put their names on a mailing list at previous lectures or film showings (App. 21,22).

The Association's monthly publication, called "National Parks Magazine", is distributed to all members (App. 25, 27). A few copies of the magazine are sold, and there is also

some free distribution thereof (App. 26). The magazine publishes articles of a general scope in the area of conservation, but sometimes technical material appears therein (App. 25).

The general articles are primarily devoted to units of the National Parks System as a whole, with occasional articles on units of the National Capital Parks System (App. 28), which includes parks in the Washington metropolitan area. Less than ten percent of the magazine's articles have to do with the National Capital Parks System (App. 30).

Finally, besides "National Parks Magazine", the Association publishes special materials on particular topics and problems two or three times a year (App. 28, 31). The last of these, as of the time of hearing below, which dealt, even remotely, with a District environmental problem or park was "The Potomac River Estuary", published in early 1968, which had to do with an emergency water supply for citizens of not only the District of Columbia but Maryland as well (App. 29, 31-32).

ARGUMENT

I

The Association's headquarters building is not entitled to real property tax exemption, under D.C. Code, 1967, Section 47-801a(h), because that property is not "used for purposes of public charity principally in the District of Columbia."

In the court below, the Association primarily sought exemption from District real property tax for its headquarters building pursuant to D.C. Code, 1967, Section 47-801a(h), which reads as follows:

"The real property exempt from taxation in the District of Columbia shall be the following and none other:
* * *

"(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia. * * *"

Secondarily, the Association contended below that, if the building were entitled to exemption, so also were the grounds upon which it is situated, pursuant to D.C. Code, 1967, Section 47-801a(r)(1), which exempts from tax

"(r)(1) Grounds belonging to and reasonably required and actually used for the carrying on of the activities and purposes of any institution or organization entitled to exemption under the provisions of sections 47-801a, 47-801b and 47-801c to 47-801f. * * *"

Although it is conceded that the Association is not "organized or operated for private gain," it is nevertheless clear from the record that its real property, upon which its headquarters building is situated, is neither used for purposes of public charity nor, even if it is so used, are such public charitable purposes principally in the District of Columbia. The Association's amended articles of incorporation (Pet's Ex. 1) reflect no particular interest whatsoever in the District of Columbia. In fact, they state that the Association exists for the purpose of

" * * * promoting the conservation and study of the national parks and monuments of the United States, and the instruction of the general public with respect thereto, and encouraging the enlargement of the system of national parks and monuments of the United States, * * *." [Emphasis added.]

Moreover, the Association's monthly publication, "National Parks Magazine", emphasizes in its masthead (App. 36) that the Association's work is devoted to nationwide goals, wherein it states, in part, that

" * * * The responsibilities of the Association relate primarily to the protection of the great national parks and monuments of America, in which it endeavors to cooperate with the [National Park] Service, while functioning also as a constructive critic; and secondarily to the protection and restoration of the natural environment generally. * * *" [Emphasis added.]

From the above, it can readily be seen that the Association is a national, rather than local, institution, both in membership and, more importantly, in its objective of being concerned with the national park system of the United States as a whole.

Simply stated, the Association's national headquarters, logically enough, happen to be located in the Nation's Capital, but its activities cannot be and are not principally devoted to the benefit of either the District of Columbia or its citizens. Webster's New International Dictionary (2d ed.) defines "principally" to be " * * * [i]n a principal manner; in the chief place or degree; primarily; chiefly; mainly." See also Hartford Acc. & Indemn. Co. v. Casualty Underwriters, 130 F. Supp. 56 (D. Minn. 1955). Words are to be accorded their ordinary meanings, and the record here amply reveals that the Association's work is not public charity "primarily", "chiefly", or "mainly" in the District of Columbia even assuming, arguendo, that its endeavors are public charity. Of a total of approximately forty thousand members, the Association's president testified below that only two or three hundred resided in the District (App. 14), with an equally scant relative total of

about fifteen hundred in the entire Washington metropolitan area (App. 19). The Association, which functions mainly through the publication of the aforementioned magazine, and from the subscription price of which it derives most of its operating revenue, distributes that magazine throughout the country to this same group of forty thousand (App. 7, 14, 25; Pet's Ex. 2).

Significantly, the Association maintains at the federally-owned Smithsonian Institution, and not at its headquarters building, a "Conservation Education Center", where the work of the Association is furthered through a series of free lectures and films provided to the public on conservation topics (App. 7, 8, 20-23). Notices of these meetings are sent throughout the public school systems of the District and the nearby Maryland and Virginia communities (App. 20, 22). Notices are also placed in the media and are mailed to those who have attended previous meetings (App. 21, 22), so that presumably a significant number of non-District citizens attend the Association's programs.

Furthermore, "National Parks Magazine" presents only occasionally articles on units of the National Capital Parks System, included in which are not only District of Columbia,

but also nearby Maryland and Virginia parks (App. 28, 30). It is interesting to note that the very issue of that magazine which the Association chose to introduce into evidence below (Pet's Ex. 3) and which was there described as a "typical" issue (App. 30), contained not a single article or other item pertaining to the District of Columbia. Also, the Association's so-called "special" publications are devoted but infrequently to a District park or conservation-related problem (App. 31, 32). Taken together, all of these items mentioned above result in the Association's having only a small connection with the District of Columbia which is wholly insufficient to warrant exemption from District tax of the real property here under consideration. Nothing in the legislative history of Section 47-801a(h), so far as the District is aware, militates against this position, either.

In the District's view, the decision of this Court in District of Columbia v. National Wildlife Federation, 93 U.S. App. D.C. 387, 214 F.2d 217 (1954), although it involved an exemption from personal property tax, has a significant bearing upon the instant case in that the Wildlife Federation carried on activities and had purposes strikingly similar

to those of the Association here. In the words of this Court,

"According to its constitution and by-laws the objects of the Federation are to organize all agencies, societies, clubs and individuals interested in the restoration, conservation and scientific management of wildlife into a unified agency to secure public recognition of the needs and values of wildlife resources, to develop a comprehensive program based upon scientific study and technical research for the advancement and conservation of wildlife and, to the same end, to present to the public pertinent facts, scientific and research discoveries and information. The provisions of its certificate of incorporation state similar purposes." [93 U.S. App. D.C. 387, 388, 214 F.2d 217, 218.]

As stated, the Wildlife Federation's personal property was sought to be exempted from tax in that case, pursuant to a statutory provision [D.C. Code, 1967, Section 47-1208] which then, as now, reads in pertinent part as follows:

"The following personal property shall be exempt from taxation.

"First. The personal property of all library, benevolent, charitable, and scientific institutions incorporated under the laws of the United States or of the District of Columbia and not conducted for private gain. * * *"

This Court, in affirming the decision of the Tax Court holding that the Wildlife Federation was exempt from such tax, further said, inter alia, that

" * * * [I]t is plain, and the contrary is not seriously advanced, that the Federation is a scientific institution.

* * *

"The District of Columbia nevertheless contests the exemption on the ground that the activities of the Federation within and for the benefit of the District are not a material part of its total work and do not relieve the local government of a burden it otherwise would have. It is true the local activities of the Federation by no means predominate. The employees at headquarters here devote but a small part of their time to local benefits. No large amount of fish and wildlife resources in the District of Columbia enlists the concern of the Federation. Furthermore, only 831 names on a mailing list of over half a million are located here and only about 150 local residents receive the publication 'Conservation News'. While its facilities are to a degree available to and are in fact used by District residents and schools, only in the sense that its over-all activities are conducted from its headquarters can the Federation be said to be primarily local.

"Accepting, therefore, as a fact that the Federation's District activities are relatively minor when measured in terms of purely local benefits, we must reject the District's legal conclusion that this forecloses the exemption. While of course the statute granting the exemption is due to a Congressional purpose to aid the public, this does not require a scientific institution to show that it performs a service of substantial character which otherwise the District government, or any other, would actually assume. Since the Federation is incorporated under the laws of the District of

Columbia, is not conducted for private gain, and is truly a scientific institution, it qualifies for the exemption under the statute. * * * [93 U.S. App. D.C. 388-89, 214 F.2d 218-19; emphasis added; citations omitted.]

The statutory provision quoted above, pursuant to which the Wildlife Federation obtained exemption from personal property tax does not require that an institution, which might otherwise be exempt from that tax, devote itself principally to activities or needs which are in the District of Columbia. Such a requirement is, however, plainly a part of the real property tax exemption provision with which we are here involved. Moreover, the latter provision does not embrace scientific institutions or organizations such as the Wildlife Federation. These facts, coupled with the virtually identical resemblance of the National Wildlife Federation's purposes and objectives to those of the Association here, dictate that the Association's real property, on which its headquarters building is located, must be held not to be exempt from tax because such property is not used for purposes of public charity principally in the District. As discussed in Part II, infra, the Association is, if anything, a scientific and educational institution for

tax-exemption purposes. But buildings belonging to such institutions are not entitled to exemption from real property tax under current District law.¹ Whatever may be the status of such institutions under the exemption provisions of other District taxing statutes is immaterial in this proceeding.²

II

The Association is an educational and scientific institution, rather than a charitable one, and, as such, is by statutory exclusion not exempt from District of Columbia real property tax.

The record in this case completely supports the conclusion that, for real property tax-exemption purposes, the Association must be held to be an educational and scientific institution, rather than, as claimed, one devoted

-
1. Buildings belonging to and operated by non-profit schools, colleges and universities " * * * which embrace the generally recognized relationship of teacher and student * * *" [Emphasis added.] are exempt from real property tax pursuant to D.C. Code, 1967, Section 47-801a(j). But, of course, the Association here cannot be said to be an "educational" institution in that sense.
 2. See, in addition to Section 47-1208, supra, D.C. Code, 1967, Sections 47-1554(d) (income and franchise tax), 47-2605(c) (sales tax), and 47-2706(b) (use tax).

to public charitable purposes "principally in the District of Columbia."

The testimony of the Association's own president at the hearing in the court below made abundantly clear that the Association was and had always been engaged in activities of a strictly educational and scientific nature. Indeed, the witness used the word "educational" and the phrase "educational and scientific" on eight separate occasions during his testimony in describing the Association's work and the purpose of its monthly publication, "National Parks Magazine." For example, with respect to the magazine, the Association's president stated that it is "an educational magazine which describes the nature and the purposes of the national parks system and similar natural areas." (App. 7.) He further testified that the magazine "is to educate the public generally about the beauties of the National Park System and the problems which it faces, including those in the District of Columbia." (App. 25.) Moreover, he stated that the Association "maintains an educational operation here * * *, the Conservation Education Center, * * *" (App. 7). Furthermore, he described the Association as "a membership organization which engages in certain

educational and scientific activities, * * *" (App. 12) and said that the Association's profit, if any, "is always rebudgeted for the next year back into the educational and scientific work of the organization." (App. 13.) As to the solicitation of members, he testified that "we tell them that by joining the National Parks Association they can help to carry on an educational and scientific activity which is in the public interest, such as, * * * running this Conservation Education Center, educational work in the District of Columbia." (App. 14.) To further such solicitation, "we retain professional membership promotion people who rent lists of other organizations, other nonprofit, educational and scientific organizations for the most part, and we send invitations to them to become members of [the Association], * * *" (App. 24).

Regarding the scientific aspects of the Association's operation, the Association's president stated that it tries "to help [the Executive Branch of the Federal Government] with such problems as the over-crowding of the park system and [has] done a great many technical studies of the possibilities of the distribution of crowds over larger areas than just the national park system." (App. 11.)

Also, "fairly technical" materials appear in "National Parks Magazine" (App. 25).

Thus, there is an abundance of evidence in this record to support the conclusion that the Association is an educational and scientific organization, not a charitable one. Indeed, even in "National Parks Magazine" itself, the Association is described as "a completely independent, private, non-profit, public-service organization, educational and scientific in character, * * *" (Pet's Ex. 3; App. 36) with no reference whatsoever to any charitable activities, either in the District or elsewhere. Organizations which are either educational or scientific are not exempt from District real property tax pursuant to any of the provisions of D.C. Code, 1967, Section 47-801a, which covers certain classes of real property "and none other." For the purposes of this case, the Association is, at best, an educational and scientific organization, and its real property, consequently, does not qualify for exemption from tax. That this is the only correct determination that this Court can here make is supported by the still-valid basic principle that tax exemptions are to be strictly construed against those claiming

them. Conference of Major Religious Superiors of Women, Inc. v. District of Columbia, 121 U.S. App. D.C. 171, 348 F.2d 783 (1965).

CONCLUSION

It is, therefore, respectfully submitted that the decision of the District of Columbia Tax Court holding erroneous the assessment of real property tax against the Association was incorrect and ought to be reversed.

HUBERT B. PAIR
Acting Corporation Counsel, D.C.

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Assistant Corporation Counsel, D.C.

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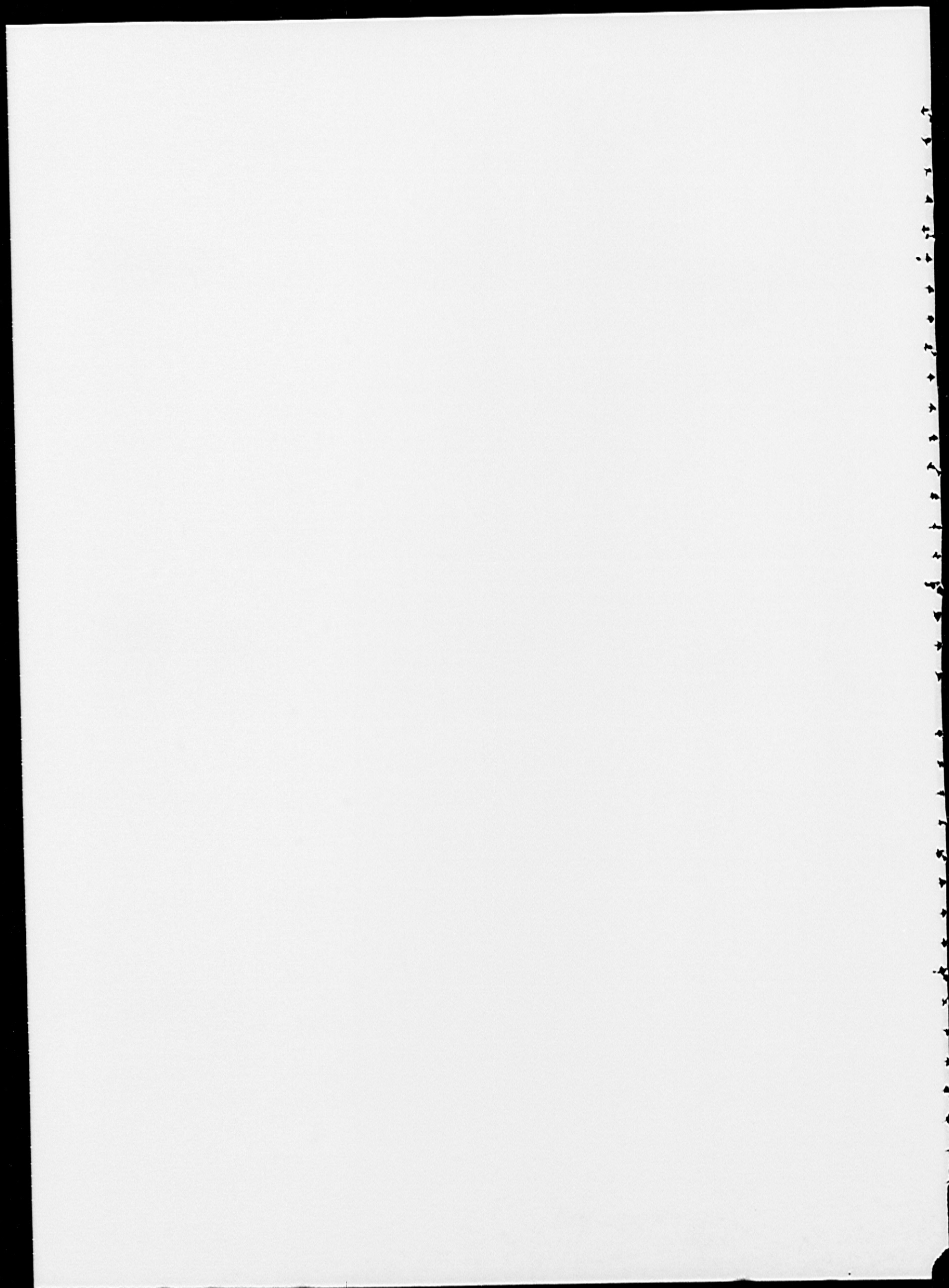
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June 1, 1970

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DISTRICT OF COLUMBIA TAX COURT

NATIONAL PARKS ASSOCIATION,)	Counsel: David E. Birenbaum, Esq.
)	
Petitioner,)	Address: 1700 K St. N.W.
)	Washington, D.C. 20006
v.)	
)	DOCKET NO. 2069
DISTRICT OF COLUMBIA,)	
)	
Respondent.)	

DOCKET

Date	Proceedings	Memorandum
<u>1968</u>		Real Estate \$2,706.00
Nov 25	Petition filed-Certificate of service.	
<u>1969</u>		
Jan 8	Answer of Respondent-Certificate of service.	
Feb 19	Hearing set for March 10-Certificate of service.	
Mar 10	Hearing-Robert C. Findlay, Esq., for Respondent.	
Mar 25	Brief of Petitioner-Certificate of Service.	
Apr 4	Respondent's motion for extension of time to file Brief-Granted. Certificate of service.	
Apr 15	Brief for Respondent-Certificate of service.	
Apr 21	Reply Brief for Petitioner-Certificate of service.	
Nov 18	Entry of appearance-David E. Birenbaum, Esq.	
Dec 2	Opinion & Order-Certificate of service.	
Dec 9	Decision-Certificate of service.	
Dec 17	Motion to Make Separate Findings of Fact, to Vacate Decision in Favor of Petitioner, and for Entry of Decision in Favor of Respondent- Certificate of service.	

Jan 6 Order on Motion for Reconsideration-
Certificate of service.

Feb 4 Petition for Review filed by Respondent-
Certificate of service.

* * * *

FILED
NOVEMBER 25, 1968

DOCKET NO. 2069

The above-named petitioner appeals from an assessment of taxes against him, and avers as follows:

1. The petitioner is a corporation, incorporated in the District of Columbia, with principal office at 1701 18th Street, N.W., Washington, D.C. 20009.

2. The tax in controversy is a real estate tax for fiscal year 1969 in the amount of \$2,706.00.

3. The notice of assessment was dated September 1, 1968, as will appear from the copy thereof hereto attached as Exhibit "A". Under authority of Section 47-801e of the D.C. Code, 1967 Edition, this petition is filed without

payment of the tax. Jurisdiction is based upon that Section and the Sections referred to therein.

4. The assessment of tax is based upon the following error:

(a) Respondent erred in denying exemption under Section 47-801a (h) and Section 47-801a (r) (1).

5. The facts upon which petitioner relies as the basis of this case are as follows:

(a) The buildings and grounds in question belong to and are operated by the petitioner.

(b) Petitioner is not organized or operated for private gain.

(c) Said buildings and grounds are used for purposes of public charity principally in the District of Columbia.

WHEREFOR, the petitioner prays that this Court hear the case and determine, find and decide that petitioner is not liable for real estate tax in the amount of \$2,706.00 or any other amount, except as provided in Section 47-801b of the D.C. Code, 1967 Edition.

* * * *

EXHIBIT "A"

DUPLICATE

SQUARE	SUFFIX	LOT	TOTAL TAX	FIRST HALF TAX
0153		0132	2706.00	1353.00
TOTAL ASSESSED VALUE			TAX RATE PER \$100	AFTER SEPT. 30, 1968 1ST HALF TAX IS INCREASED BY 1% PER MONTH UNTIL PAID
90,200			3.00	PENALTY
				TOTAL

NOTE: SEE REVERSE SIDE
FOR IMPORTANT INFORMATION

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FINANCE OFFICE-PROPERTY TAX DIVISION
REAL ESTATE TAX BILL
FOR FISCAL YEAR 1969

MAKE CHECK PAYABLE TO

D. C. TREASURER

National Parks Association
1701 18th St. N.W.
Washington DC

FIRST HALF TAX DUE BY SEPT. 30, 1968

This bill is for real estate taxes due for the period July 1, 1968 to June 30, 1969. Total tax may be paid with this bill. If total tax is not paid, you will receive a bill for second half tax due March 31, 1969.

012644

THIS COPY MUST BE RETURNED WITH PAYMENT
DO NOT FOLD, STAPLE OR MUTILATE THIS BILL

CREDIT TO 9011

* * * *

FILED
JAN 8, 1969

DOCKET NO. 2069

ANSWER OF RESPONDENT
DISTRICT OF COLUMBIA

Respondent, in answer to the petition filed in the above-entitled case, admits and denies as follows:

1-2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits so much of the first sentence of paragraph 3 of the petition as states that a copy of the notice of assessment herein is attached to the petition and is marked as Exhibit "A", but denies that said copy reflects that it is dated September 1, 1968. Further answering said paragraph 3 of the petition, respondent admits the allegations contained in the second and third sentences thereof.

4(a). Denies that respondent erred as alleged in subparagraph (a) of paragraph 4 of the petition.

5(a). Admits the allegations contained in subparagraph (a) of paragraph 5 of the petition.

(b)-(c). Denies the allegations contained in subparagraphs (b) and (c) of paragraph 5 of the petition.

6. Denies each allegation contained in the petition not heretofore admitted, qualified or denied.

* * * *

[1]

Monday, March 10, 1969

Pursuant to notice, the above-entitled matter came on for hearing at 10:05 a.m.

BEFORE:

HONORABLE ROBERT M. WESTON.

* * *

[5]

ANTHONY WAYNE SMITH

was called as a witness for and on behalf of petitioner and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DWAN:

Q Mr. Smith, will you please state your position with the National Parks Association.

A I'm the President and General Counsel.

Q And how long have you been associated with the National Parks Association?

A As Executive Officer, for about ten and a half years.

Q And how long have you had your present position?

A For that same length of time.

Q Now, Mr. Smith, would you please describe in a general way the operations of the Association. * * *

A The Association is concerned with the protection of the national parks system of the United States, including the parks in the District of Columbia, which are a part of the National Capital Parks System. And it functions mainly by the publication of a magazine which goes to about 40,000 members. It's an educational magazine which describes the [6] nature and the purposes of the national parks system and similar natural areas.

It also functions in terms of -- in a consultive capacity to government agencies such as the national parks system. It maintains an educational operation here in the District of Columbia, the Conservation Education Center, which is a series of lectures and motion picture exhibitions and sometimes field trips out into the environs of the city. The lectures and motion pictures are at the Smithsonian Institution.

This program was developed in cooperation with the public school system of the District of Columbia. About eight or ten years ago, I worked this out with the then Superintendent of Schools, Mr. Hansen. And we send out announcements of our programs to all the public schools in cooperation with the superintendent here. And these are

distributed in the classrooms or through the offices of the schools to all the teachers, and the teachers and the students are invited to come.

This was deliberately developed as a method of carrying on educational work through teachers towards the students in the District of Columbia.

* * * *

[7] Q And where are these meetings held?

A At the Smithsonian Institution.

We also maintain in Washington -- we are just in the process of developing a library of our own at our headquarters. We hope to make this available publicly, to the public and to students who wish to come in and use it for research work in connection with the protection of natural areas and parks and wildlife and that kind of thing with which we are concerned.

I would also hope to make it a music center. We have a very fine pipe organ in one of the large rooms in the building. And while we have owned this building only for about a year now, and we are in the process of refurbishing it and improving it, one of the things that I hope we can do is to make it a music center.

For one thing, we have talked with people in touch with the Guild of American Organists about the possibility of using it as their Board Room on a contributory basis. We would simply make it available to them free.

* * * *

[8] Q Mr. Smith, does the Association make studies of any local conservation problems?

A Yes. We've been concerned with the problem of Washington's water supply, for example. We have recommended the solution of the Washington water supply problem by the construction of an intake estuary of the Potomac, fresh water estuary. We have done an engineering study of that problem by professional engineers.

We also are concerned with the efforts to protect park and open spaces in the District of Columbia.

* * * *

THE COURT: Beginning with water supply for the District, what was the next item you referred to?

THE WITNESS: The protection of open spaces and parks in the District of Columbia. This begins, of course, with the National Capital Parks System which is part of the national park system. And we endeavor to help both the

national park system and the District of Columbia to protect this system.

BY MR. DWAN:

Q Any particular park areas that you have in mind?

A Well, we participated some years ago in the efforts [9] to protect Glover Archibald Park. This problem arises rather frequently.

Q That's entirely in the District, is it?

A That's entirely within the District of Columbia, yes.

Q Mr. Smith, in view of the fact that Washington is the seat of the government, does that -- are there other activities that have relationship to that fact, such as the Congress being here and all that?

A Well, we do not engage in lobbying activities. We do not engage in efforts to influence legislation to any substantial extent. We may occasionally be invited by a committee of Congress to testify on questions related to the national park system or similar problems. But we participate in cases like that as, we hope, objective analysts of the problem that is being investigated. So that we are not here to bring pressures to bear on Congress.

Q How about the administrative side of the government, such as the Department of Interior?

A With the Executive branch, this is a different matter. We maintain consultive relationships, I would describe them, with quite a number of agencies of the Executive branch, the National Park Service being an obvious example.

We try to help them with such problems as the overcrowding of the park system and have done a great many technical studies of the possibilities of the distribution of crowds [10] over larger areas than just the national park system. As, for example, we've studied the problem out at Assateague National Seashore which has some bearing on the problems, recreation problems of people from the District of Columbia. And we have urged that facilities be placed on the mainland opposite the seashore so that the people can enjoy the seashore without too much overcrowding.

Now, this is just an example of the kind of technical studies that we do and the kind of consultative work that we carry on with the major Federal agencies.

Q And your headquarters building, Mr. Smith, is that open? Can anybody walk in?

A Yes, anybody can come in. And as I say, we hope to make the library available within the limits of our size in any event for public use and research and reading in the field that we are interested in.

* * * *

[11] Q Mr. Smith, is the membership of the Association open to the public generally?

A It is.

Q And what is the approximate number of present members?

A 39,488, if I'm not mistaken, as of December 31. It's increased by about a thousand since that time.

Q Is the Association in any sense a private foundation, would you say, comparable to the Ford Foundation or things like that?

A No, sir, I wouldn't consider the Association as being that kind of an institution. It is a membership organization which engages in certain educational and scientific activities, but it does not make grants, for example. * * * *

[12] THE COURT: The financial statement in question of the National Parks Association is identified as Petitioner's Exhibit No. 2. * * * *

[13] BY MR. DWAN:

Q I notice, Mr. Smith, that in the far right-hand column for 1967, there was a loss of \$21,000 plus. I notice, also, that in the column just to the left of that, there was indicated a profit for 1968 of \$41,000 plus, and an estimated profit in 1969 of \$21,000 plus.

What's the explanation of that difference?

A The explanation of that is that we were refinancing and selling stocks and buying short-term government bills [14] because of our judgment of the current market situation, and the transactions are reflected in the last item under "Income," up above where in 1968 the result of those transactions was \$78,000 worth of capital gains, and in the first 12 months of this year, \$41,000, \$42,000 worth of capital gains.

So that in both cases the capital gains taken exceed the excess of income over expenses.

Q So that without those capital gains there would be a deficit?

A That is correct.

Q * * * In a year in which there is a profit, Mr. Smith, how is the profit used?

A The profit is always rebudgeted for the next year back into the educational and scientific work of the organization.

* * * * *

CROSS-EXAMINATION

BY MR. FINDLAY:

* * * * *

[15] Q And the property with which we are here concerned is the National Headquarters of the National Parks Association?

A That's right.

* * * *

Q * * * Now, out of the 40,000 approximately, members that you have, how many of those are in the District of Columbia?

[16] A * * * Not a large proportion of them.

Q Can you approximate how many would be?

A Perhaps two or 300.

Q * * * Do members pay dues?

A Yes, they do.

* * * *

Q And what does one receive for his dues?

A Well, one receives a magazine, but most people become members because they think they are contributing to a public service. We tell them that by joining the National Parks Association they can help to carry on an educational and scientific activity which is in the public interest, such as, for example, running this Conservation Education Center, educational work in the District of Columbia.

Q How many publications do you have in addition to this magazine you mentioned?

A We get out occasional technical studies in addition to the magazine, but this is the only periodical that we [17] publish.

Q And it's a monthly?

A It's a monthly.

* * * *

REDIRECT EXAMINATION

BY MR. DWAN:

Q Mr. Smith, what percentages of your business time is spent here in the District of Columbia?

A Practically all of it.

Q What would the exceptions be?

A Well, I went to Texas last December in connection with one of the national parks there. Now, I will do that occasionally, but that is about the only thing that takes me out of the city. For the most part, I work here.

Q Yes.

And would that be true of your associates and your staff, also?

[18] A That's true even more so of my associate and my staff than it is of me.

Q I see. Thank you.

THE COURT: Have you any satellite operations elsewhere, such as you conduct in the Smithsonian?

THE WITNESS: No, we do not.

THE COURT: That is the only place where you have a regular routine of public service to the school children to interest them in the use of parks and outdoor recreation, and so on?

THE WITNESS: That's right.

THE COURT: Let me ask you about, for instance, the Bear Mountain project of Consolidated Edison, of which I happen to know something, having been a former Power Commission Examiner.

How much time and effort did you put into resisting the Con-Edison's plans there in terms of the public interest in the preservation of that park? Did you spend a substantial amount of time there?

THE WITNESS: I went to New York and participated as an expert witness in that case. I did so as an individual, however. I am free to spend a certain amount of my time as an individual in matters not related to the work of the National Parks Association.

Now, of course, in this instance there was a close
[19] connection because the Association did participate in
that case as a party. We filed a short brief in which we
recommended that instead of pump storage being developed at
Bear Mountain, that current brought from mine mouth plants
in the anthracite field be used instead --

* * * *

THE WITNESS: We recommend a different approach
technically to the solution of the problem of electric power
in that situation. And we did file a -- well, it was hardly
a brief, but a statement in the case to that effect.

But I went up there and participated, however, as
I say, in the capacity of an individual expert witness. And,
as I recall it, not representing anyone. * * *

In other words, we send out notices of our lectures
and motion pictures to the individual teachers, and the
individual teachers bring quite a few of their children,
particularly to the motion pictures, but we get a pretty good
[20] attendance from both teachers and students at the
lectures, also. Those are run about, oh, once a month we
have this kind of a program at the Smithsonian Institution.
They're extremely well attended. We get on a Friday evening

often 500 or 600 people out with a large proportion of children, and we've had situations where the attendance was so large that we couldn't get the people into the hall and had to turn several hundred people away, in which event we try and make arrangements for a return performance.

THE COURT: Have you sought the help of people who are interested in D.C., for instance Justice Douglas and people like that, in promoting your activity locally here?

THE WITNESS: Justice Douglas has been very closely associated with us in our work. One of the things that we have been concerned with together with Justice Douglas is to help protect the old C&O Canal National Historical Park as a recreational area for the people of the District of Columbia.

Now, that park, of course, begins in the District of Columbia, or at least the Canal begins in the District of Columbia, and inside the District of Columbia it is part of the National Capital Park system. And then it continues on out beyond that.

But a great many people in the District of Columbia, including the children here, use it for hiking and for outing, outdoor recreation in general.

[21] I have been -- Justice Douglas has been a very close

associate of ours in that work. He and I are both members of the Executive Committee of the C&O Canal Association, and the National Parks Association has worked very closely with the C&O Canal Association in that work. As a matter of fact, I developed the recreational plan for the C&O Canal which was eventually adopted by the National Park Service and the National Capital Park System which turned around making it possible for people to get down to the canal from the side roads instead of having a longitudinal highway down the canal as was once proposed.

THE COURT: How many members do you think you have in the metropolitan Washington area?

THE WITNESS: Well, in the metropolitan Washington area probably -- well, possibly 1500.

* * * *

RECROSS-EXAMINATION

BY MR. FINDLAY:

Q You say, Mr. Smith, that your membership pitch, if I can characterize it as that, is informing potential members that you do work of an educational and scientific nature.

Did I understand you to say that?

[22] A Yes.

* * * *

[23] Q Mr. Smith, how many national parks are there in the United States?

A There are about 140 units of the national, actual national parks. Then there are recreation areas and there are military battlefields, and so forth, which puts the total up to around 250.

Q And how many of those units are located in the District of Columbia?

A Most of them are located outside the District of Columbia.

* * * *

[24] Q * * * Now, as to this program that you conduct at the Conservation Education Center of the Smithsonian, is that open to the public or just to members?

A Yes. The public.

Q How does the public find out that you are having these lectures, films, and what-not?

A We send out notices in the autumn to about thirty or 35,000 -- we send out about thirty or 35,000 notices. The main avenue of distribution is through the public school system. Those go, first of all, to the public schools in the

District of Columbia. They are sent with the approval of the superintendent of public schools here to all the principals of all the schools in the District of Columbia. And the arrangements are that the principals of the public schools distribute them to all the schoolteachers in all the schools. And additional copies are available if people want them for actual distribution to students in the classrooms.

In addition to that, we frequently send out notices for posting on the bulletin boards of the schools in the District of Columbia, if we want to add a reminder notice.

Then in addition to that, we gather the names of the people that come to the lectures, and we maintain a list of those names, which is kept on Addressograph plates --

Q Whether they're members or not?

[25] A Whether they're members or not. All they have to do is put their names down and ask to receive notices of the meetings. There are six or 7,000 of these people. Most of these are in the District of Columbia, I would say. And these notices -- these people also get the original notice -- this list, this mailing list of six or 7,000 people, these people all get the notice in the fall.

Now, that's all repeated in February. The 30 or 35,000 notices go out to all the schools again in February,

because we want to keep everybody up to date. Sometimes we don't finalize our program for the spring until in the middle of the winter, perhaps.

Q Do you make a similar distribution for publication to the nearby Maryland-Virginia schools?

A Yes; we do. We have the -- after this arrangement was worked out with Superintendent Hansen, with his support, I went to the superintendents of the surrounding counties, and we worked out a similar arrangement there. But the origin of it was in the District of Columbia schools.

Q * * * Assuming I'm not a member of your organization, how would I find out that you're having a movie or a lecture or a field trip on a particular day? What sort of publication do [26] you utilize to inform the general public of your activities?

A We go to great trouble to see to it that announcements are placed in newspapers.

Q You do advertise in the papers?

A Yes, we do.

Q How about the radio and television?

A We have used the radio and television to some extent. We haven't used it as much. I believe these notices are now going out over radio and television.

Q Now, if I were not a member, would I have to be accompanied by a member --

A No.

Q -- to attend?

A No. Completely free.

Q All right.

In other words, tickets, or admission cards, that sort of thing, are not issued?

A No tickets; no admission cards.

Q Not even to members?

A No.

* * * *

[27] Q Do you employ, either on a free basis or a voluntary basis, any individuals or even groups that conduct research in the scientific aspects of what you are interested in?

A Yes.

For example, we -- the study of the water supply system based on the estuary was done by a professional engineer who was retained by us on a free basis, fee and expenses, hourly fee and expenses basis. This man, however, really contributes about half of his time. * * * *

* * * *

Q How do you go about soliciting membership in the organization? * * * *

A We retain professional membership promotion people who rent lists of other organizations, other nonprofit, educational and scientific organizations for the most part, and we send invitations to them to become members of National [28] Parks Association, and descriptive material telling them what the Association does. It is mainly a plea to join with us in helping to protect the National Park System and the natural environment generally.

Q But it's fair to say, is it not, that the National Parks Association is an organization that is truly national in scope? In other words, your endeavors really concern themselves with the National Park System as it exists in the United States?

A Well, we are concerned with the protection of the National Park System, the entire National Park System; yes, sir, throughout the United States.

Q For example, as His Honor questioned you earlier about Bear Mountain, you are just as concerned about problems presented there as you would be about problems presented in Glover Archibald Park?

A I must say we tend to concentrate a little more closely on the problems of the District of Columbia and its environs.

* * * *

[30] Q Mr. Smith, you mentioned earlier that your magazine, monthly magazine is educational in nature.

Do you mean by that that it's purpose is to generally educate the public * * * *.

A Yes, I meant that. It is to educate the public generally about the beauties of the National Park System and the problems which it faces, including those in the District of Columbia.

Q So the articles, would it be fair to say, are more or less of a general scope, something for everybody who is interested in this area?

A Yes; I think that's probably correct.

Q Do technical materials ever appear in the magazine?

A Yes, fairly technical.

* * * *

[31] Q * * * do just members receive the magazine or is it distributed to non-members?

A For the most part, just members. * * * *

We make some free distributions of the magazine.

Q To whom?

A Well, to whoever we may think at any time are interested in it. We do not make a general free distribution of the magazine, which is fairly expensive.

Q In other words, you don't independently sell copies of the magazine?

[32] A Oh, nothing but maybe in the course of a year a few dozen will be sold. * * * *

Q So the majority of the people then, I take it, who receive the magazine, either as part of their dues or get it from time to time, are outside the District of Columbia?

A Yes; that's true.

Q * * * With respect to this financial statement, Petitioner's Exhibit 2, an item, sir, listed under "Expenses," the last item under the "Expenses," category, is denominated Sequoia fund, and then under that, "Magazine Publication Cost Allocation," one line of figures, and then "Other," another line of figures.

Will you tell us what is meant by that entry, what that encompasses -- what it means, really?

A Yes.

We have a fund which we received as a bequest some years ago for the protection of the Sequoias, and we credit our publishing costs, which are the second item under "Expenses," with a portion of the cost of the space, the publishing cost of the magazine, which are attributable to articles on the redwoods. In 1968, the space, according to our accounts, which we allocated to the redwoods in the [33] magazine was, as you see, \$6,091. And the figure "Other," means simply "other expenses paid out of the Sequoia fund related to the Sequoias."

Q Where are the redwoods located?

A They're in California.

* * * *

PAUL MASON TILDEN

was called as a witness for and on behalf of the petitioner and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

[34] BY MR. DWAN:

Q Mr. Tilden, will you please state your position with the National Parks Association.

A Yes, sir. I am Editor of the National Parks magazine, which is the monthly publication of the Association.

Q * * * And would you please describe the general set-up of the magazine?

A Well, the general content of the magazine aims articles on, primarily I think on the units of the National Park System, and on occasion on the units of the National Capital Park System, on conversation issues in general, and a certain amount of space is reserved for commentary on current events in the parks and in general, conservation. And then there is reserved a page for editorial comment in editorial form.

Q And they're articles, feature articles, so to speak?

A Yes. These are feature articles, as I say, on the Park System and on general conservation, and these will vary in length depending on the subject.

* * * *

[36] Q Mr. Tilden, do you edit any other publications for the National Parks Association?

A Yes, sir. I edit the occasional publications that Mr. Smith mentioned, the studies of various sorts, and, in fact, I am responsible for producing the printed material that the Association publishes other than the membership promotional material, which is handled by a separate agency.

Q And do you have with you any examples of studies of that nature?

A Yes, sir; I have. I have a very recent report which is a study on what we think is the proper development of Assateague Island National Seashore over on the Eastern Shore of Maryland and Virginia.

* * * *

I also have a copy of a study which was published during the past year on the topic which was mentioned earlier, the Association's proposal for an intake on the estuary of the Potomac River in helping to supplement the District's water [37] supply.

I have another study here by Mr. Fosdick which is essentially an analysis of ways in which pollution can be kept out of the North Branch of the Potomac River up above.

* * * *

[39] CROSS-EXAMINATION

BY MR. FINDLAY:

Q Where is the North Branch of the Potomac River located, Mr. Tilden?

A The North Branch of the Potomac River is in the headwaters of the Potomac; and it is one of the major branches, which runs south, strangely enough --

Q Which state is it located in?

A in the State of West Virginia.

Q * * * Now, with reference to Petitioner's No. 3, the magazine, would you characterize this, sir, as a typical monthly, I mean, typical --

A In content, sir?

Q Yes. Are the contents of this typical of the number and type of article you publish?

A Yes, I think that might be said to be true.

* * * * *

Q * * * You testified, I believe, that occasionally, although there is not in this particular issue, occasionally there are articles in here that pertain to the National Capital Park System.

[40] A Yes. We have run a number in the past.

Q What ratio of those, of National Capital Park articles to total number of articles would you say there is?

A I think it would be small, sir. I can't give you an exact figure.

Q Less than 10 percent?

* * * * *

A I would think so; yes.

* * * *

Q About how many of these special publications do you produce in a year's time on the average?

A Well, I suppose the average might be two or three a year. * * *

Q And when was the last time that one of your special publications concerned itself directly with the National Capital Park System?

[41] A With the National Capital Park System?

Q Or the parks or a park-related problem concerning the District of Columbia?

A You are referring now to special publications?

Q Yes, sir.

A I can't remember that we have done any special publications relating directly to the National Capital Park System.

Q Perhaps I haven't made myself clear. Don't misinterpret my question.

What I meant to ask you simply is when, if you can remember, was the last time, if there has been a time, when one of your special publications has been devoted to a District of Columbia problem or a District of Columbia park?

A * * * I think that the Fosdick estuarial study was the last publication which, I believe, was published in early 1968. * * * *

Q This is the water supply problem that has been referred to before?

A Yes.

* * * *

Q And that water supply problem in connection with this [42] publication, doesn't that also involve the State of Maryland and its residents?

A I believe it does, sir.

* * * *

REDIRECT EXAMINATION

BY MR. DWAN:

Q These special studies are prepared in your office, are they, Mr. Tilden?

A Well, they are prepared for publication in my office, and whatever editorial work is necessary to do is done in my office and the final preparation for printing.

Q The people who participate in the studies, do they do some or all of the research right here in the District?

A I can't truly answer that question. I don't know the answer to that.

Q But at any rate, your part of it is done here?

A Oh, yes.

RECROSS-EXAMINATION

BY MR. FINDLAY:

Q Your part of it is here because your office is in the Headquarters building which happens to be in the District?

A That's correct.

* * * *

[43]

THOMAS WEBSTER

was called as a witness for and on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DWAN:

Q Mr. Webster, your position, please, with the National Parks Association.

A I am the administrative assistant.

* * * *

[44] Q * * * As I remember Mr. Smith's testimony, at present there are no renters in the building, is that correct?

A That is correct.

Q And are there any prospects of there being any renters?

[45] A Yes. We have expended a great deal of time and energy in attempting to rent the top floors, and we have secured a tentative tenant, and we are firming up the details with them right now.

* * * *

CROSS-EXAMINATION

BY MR. FINDLAY:

[46] Q Mr. Webster, were you concerned with the preparation of this financial statement, which is Respondent's Exhibit 1?

A I was.

* * * *

Q Would you explain for us what is meant by this entry denominated "Travel" followed by three figures?

A Followed by three figures?

Oh, I see.

Q Whose travel is that, in other words?

A Well, now, this is travel of people that are retained by the Association doing studies. This includes an item of travel for Mr. Smith. It includes an item of travel for myself, all germane to the conduct of the business.

Q And what are examples, please, of places that you travel to and from, you, or Mr. Smith, particularly?

A Well, Mr. Smith, for instance, last year, as a part of that one figure attended the National Wildlife, North

American Wildlife Conference in Houston, Texas. Mr. Smith as one of the founders of National Watershed Congress also attended a meeting of the Watershed Congress. I don't recall [47] at the time where it was located. But this involves his travel, getting to and from those places.

Q And does any of this travel involve employees traveling somewhere outside the District of Columbia to do work on a project or to visit a national park or something of that sort?

A Certainly. Conservation is a very general thing and not limited to the District.

Q So this item reflects all of that activity?

A Very definitely.

Q Much of which, I presume, involves activities taking place outside of Washington?

A Well, yes. That's why we travel.

* * * *

MR. FINDLAY: In connection with that, I might just ask if a part of that reflects anybody that you bring to the District from elsewhere for whatever purposes you might have in mind.

THE WITNESS: Yes, it very definitely would.

* * * *

EXTRACT FROM PETITIONER'S EXHIBIT NO. 3, ENTITLED
"NATIONAL PARKS MAGAZINE", DATED FEBRUARY, 1969

The Association and the Magazine

The National Parks Association is a completely independent, private, non-profit, public-service organization, educational and scientific in character, with over 39,000 members throughout the United States and abroad. It was established in 1919 by Stephen T. Mather, the first Director of the National Park Service. It publishes the monthly National Parks Magazine, received by all members.

The responsibilities of the Association relate primarily to the protection of the great national parks and monuments of America, in which it endeavors to cooperate with the Service, while functioning also as a constructive critic; and secondarily to the protection and restoration of the natural environment generally.

* * * *

FILED
DEC 2, 1969

DOCKET NO. 2069

OPINION AND ORDER

The issue is whether petitioner is exempt from
D. C. real estate tax on its headquarters building at

1701 - 18th Street, N. W. Petitioner was formed in 1919 under the District's provisions for incorporation of associations "for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes * * *" (Act of March 3, 1901, Code sec. 29-601), and operates in general for the promotion and protection of our National Parks system, including the parks in the District of Columbia. The issue involves \$2,706 tax assessed for the fiscal year 1969, and arises now because the Association, late in 1967, purchased its headquarters building from the Disabled American Veterans.

The answer to the issue depends upon the construction to be given to the statutory exemption provision, exempting from D. C. real property tax (Act of December 24, 1942, 56 Stat. 1089; P.L. 846, 77th Cong., Ch. 826, section 1; Code sec. 47-801a(h)) --

Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia.

Code sec. 47-801a(r)(1) extends the "building" exemption to the land "reasonably required and actually used" to carry out the charitable activities and purposes. That portion of

such premises rented for "any activity other than that for which exemption is granted" is subject to real estate tax. Annual reports under oath are required. Code secs. 47-801b and c.

Although not referred to by the parties, the provisions of section 1(q) of the Act of December 24, 1942, are of importance, exempting --

Buildings belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the provisions of this Act, and used as administrative headquarters thereof.

Messrs. Anthony Wayne Smith, President and General Counsel of the Association, and Paul Mason Tilden, Editor of the National Parks Magazine, and Thomas Webster, Administrative Assistant, testified as to the uses, purposes, operations and activities of their organization. Their testimony is best summarized in the descriptive statement, "The Association and the Magazine", which follows the table of contents in the issue (February, 1969, Volume 43 Number 257) current at the time of trial. (Petitioner's exhibit 3.) As there set out --

The National Parks Association is a completely independent, private, non-profit, public-service organization, educational and scientific in character, with over 39,000

members throughout the United States and abroad. It was established in 1919 by Stephen T. Mather, the first Director of the National Park Service. It publishes the monthly National Parks Magazine, received by all members.

The responsibilities of the Association relate primarily to the protection of the great national parks and monuments of America, in which it endeavors to cooperate with the Service, while functioning also as a constructive critic; and secondarily to the protection and restoration of the natural environment generally.

Dues are \$6.50 annual, \$10.50 supporting, \$20 sustaining, \$35 contributing, \$200 life with no further dues, and \$1000 patron with no further dues. Contributions and bequests are also needed. Dues in excess of \$6.50 [i.e., the value of the monthly magazine and postage] and contributions are deductible for Federal taxable income, and gifts and bequests are deductible for Federal gift and estate tax purposes. As an organization receiving such gifts, the Association is precluded by law and regulations from advocating or opposing legislation to any substantial extent; insofar as our authors may touch on legislation, they write as individuals. * * *

The officers and employees of the Association spend almost all of their business time in Washington. They are interested in and have put time, effort and money into local projects: our D. C. water supply system, protection of our open spaces and parks (e.g. Glover-Archibald), and the development of Assateague Island National Seashore. See

transcript, pp. 8 - 10, two lead articles in petitioner's exhibit number 3, and its exhibits 4, 5 and 6. They maintain the Conservation Education Center (initially funded by the Eugene and Agnes Meyer Foundation), which gives lectures and motion pictures at the Smithsonian, as well as "sometimes, field trips out into the environs of the city." (Tr. 6.) The Center was "worked out" with the District's public school system, and furnishes program announcements to teachers and pupils. The Association is in the process of developing a library for public use covering its concerns, at the headquarters building.

The Association operates on a narrow margin of receipts (mostly membership dues and contributions) over expenses (membership solicitations, salaries, and professional services retained, inter alia), and any "profit" is "always re-budgeted for the next year back into the educational and scientific work of the organization." (Tr. 14, Pet. Exhibit 2.)

Approach to the problem of construing the Act. The simplistic approach is to read the exemption provision very literally: "public charity" is one thing according to the dictionary, "public education", or "scientific work" are others. As respondent puts it, "there is an abundance of evidence in

this record which would support a conclusion that petitioner is an educational and scientific organization, and not a charitable one. * * * its real property, therefore, does not qualify for exemption from tax." (Br. 11.) The simplistic approach would be entirely proper if there were any evidence that Congress intended such a distinction, or if there were a reason for such a distinction. As we shall see, no such evidence or reason appears. An extension of this approach is to assume, arguendo, that petitioner's building is "used for purposes of public charity" in the legal sense, but to define restrictively the clause "principally in the District of Columbia" (Resp. Br. 5) --

* * * petitioner's national headquarters happen to be located in the District of Columbia, but its activities are not principally devoted to the benefit of either the District or its citizens. In Hartford Acc. & Indemn. Co. v. Casualty Underwriters, 130 F.Supp. 56, 58 (D. Minn. 1955), it is said that the word "principally" is "synonymous with mainly, chiefly, in the main, * * *" The record here, however, amply reveals that petitioner's work is not public charity "chiefly" or "in the main" in the District of Columbia. * * *

Petitioner, in reply, also adopts a somewhat oversimplified approach to the problem. Parsing the words of the Statute, petitioner finds the only requirement to be that its building be "used for purposes of public charity", in

distinction from "purposes of public charity principally in the District of Columbia". "Indeed, an abstraction like 'purposes of public charity' can hardly have a location anywhere." Reply Br. p. 1. For a broad rather than a restrictive definition of "public charity" petitioner relies on the authorities, particularly International Reform Fed. v. Dist. Unemployment Comp. Bd., 76 App. D.C. 282, 131 F.2d 337 (1942), cert. den. 317 U.S. 693, in which the Federation, founded for "the establishment of higher codes of morality and manners throughout the world" (76 App. D.C. at 287), was held to be exempt from D. C. Social Security taxes as a corporation (in the words of the statute) "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes."

The exemption provision there in question was that contained in the original Social Security law -- the Act of August 28, 1935, 49 Stat. 946, section 311(b)(7), in part. This exemption provision was restrictively amended by the Act of June 4, 1943, 57 Stat. 100, ch. 117 (which extensively revised the entire section 311(b)) to read "organized and operated exclusively for religious or charitable purposes". Code section 46-301(b)(5)(G), in part. The Congressional

purpose of the amendment was clearly to broaden the coverage of unemployment compensation and the taxes, or "contributions" exacted therefor.^{1/} The Reform Federation case is, however, useful on the issue involved in the case at bar, as an example of the approach taken by the courts in construing other exemptions from D. C. taxes, and will be further considered infra.

Finally on this subject, it is common knowledge, at least in the District of Columbia, that Congress has specifically exempted from all or some taxes many private organizations involving narrow special interests not commonly thought of as "public charity". Using the conventional rule that tax exemption provisions are ordinarily construed strictly against the taxpayer, National Rifle Assn. v. Young, 77 App. D.C. 290, 291, 134 F.2d 524, the easy approach is, to remit petitioner to Congress for relief, on the basis that a legislative remedy is appropriate for doubtful exemption claims. As we shall see, the strict construction rule is not applicable here, and the general approach by way of avoidance has not been used by the courts in prior cases.

^{1/} The International Reform Federation now pays Social Security taxes on its employees.

Legislative history. The prime source material on what Congress intended by the notably ambiguous language of section 1(h) of P.L. 846, supra, (Code section 47-801a(h)) is found in S.Rep. No. 1634, 77th Cong., 2d Sess., and in the Committee Print of the Hearings on S.2673, superseded by S.2804, "A Bill to Define the Real Property Exempt from Taxation in the District of Columbia." The testimony of the then Corporation Counsel, now Senior Judge of the U. S. District Court, Richmond B. Keech, shows that the legislation had its origin in a study ordered by the District Commissioners on October 18, 1940.

Pursuant to the order, The D. C. Assessor made a study of "all privately owned exempt property" located in the District. The study was reviewed by a Real Estate Tax Exemption Board established by the Commissioners. The result was the return to the tax rolls of \$24,855,397 of real estate "erroneously exempted" under then-existing law. The District Commissioners asked Congress for a rewrite of the tax exemption statutes which, they said, "are too strict in some instances, susceptible of far too liberal interpretation in other respects, and in need of reclassification if they are to be fairly and reasonably administered." Committee Print, pp. 1 - 8.

Examples of the many organizations so reinstated to the tax rolls and testifying at the August, 1942 hearings include:

the National Rifle Association, the American Pharmaceutical Association, and the Brookings Institution (insofar as its research and administrative departments were concerned). Each organization wanted the language of the proposed rewrite to be sufficiently broad to exempt it. Significantly, the Community Chest of D. C. asked that the language of section 1(a)(3) of S.2673, then under consideration, be broadened for the benefit of nationwide organizations with buildings in the District, such as the Boy Scouts and the YMCA. Committee Print, p. 79. As proposed in S.2673, that section exempted --

(3) Buildings used for purposes of public charity belonging to and operated by institutions which are not organized or operated for private gain. Public charity as contemplated by this Act, means charity which confers benefits on the public, or some portion thereof, of the District of Columbia. Charity is none the less public because it is limited in its operation to the members of a particular race, sect, or society, so long as it is wholly beneficent in the end to be attained, and no private or selfish purpose is fostered under the guise thereof;

(4) * * *

As thus phrased, it is reasonably clear that S.2673 contemplated the so-called "quid pro quo" theory of exemption: charitable institutions are exempted if and when they serve the local public; cf. D. C. v. National Wildlife Federation,

93 App. D.C. 387, 389, 214 F.2d 217, " * * * [when the institution] performs a service of substantial character which otherwise the District Government, or any other, would actually assume." Note that only benefits to the D.C. (local) public are mentioned in the text proposed by S.2673 as the basis for the charitable exemption.

As sent to the Senate floor, however, Section 1(h) of S.2804 was radically revised to substitute the present text (S.Rep. No. 1634, pp. 240 - 242, word struck through deleted, word underlined added) --

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, and which are used for purposes of public charity principally in the District of Columbia.

According to the Senate Report, p.3, see also the identical language of H.Rep. No. 2635, 77th Cong., 2d Sess. p.2 - 3:

Subparagraph (h) exempts buildings belonging to and operated by institutions which are not organized for private gain and which are used for purposes of public charity principally within the District of Columbia. The word "principally" has been inserted in this subparagraph in that some of the activities and benefactions of organizations devoted to public charity must, of necessity, reach beyond the confines of the District of Columbia. Such an institution is the American Red Cross, a quasi-governmental

agency, designated by the Commissioners of the District of Columbia as a "charitable organization." No one could contend that its works of mercy and assistance are or could be limited to the District.

As everyone knows, substantially all of the charitable work of the American Red Cross is done outside the District rather than "some" of its "activities and benefactions". The example cited by the Report lays to rest the idea that Congress meant to exempt only local charities. The substitution of S.2804 language for that of S.2673 in section 1(h), in the light of the hearings,^{2/} suggests that the text of section 1(h) was deliberately left as a broad generality, for future interpretation in particular cases such as the one at bar.

The Senate and House reports also contain identical language with respect to the coverage of section 1(q) of the Act, supra p.2. Again, the examples given are not in point on the present issue, but the language of the reports tends to show that a restrictive reading of the exemption provisions in the case of organizations such as petitioner's is not

^{2/} A wide spectrum of special interests not generally regarded as charitable or educational testified at the hearings. None of their suggestions for phraseology of section 1(h) were adopted.

the Congressional purpose (H.R. Report No. 2635, supra, p. 6):

The final type of building, which should be exempt from taxation, is set forth in subparagraph (q), and the language is intended to cover buildings which are used as administrative headquarters for and owned by organizations charged with the administration, coordination, or unification of the activities which are carried on, either locally or which may extend beyond the confines of the District of Columbia, by institutions or organizations entitled to exemption from taxation under the provisions of this act and which have been enumerated in the preceding subparagraphs. The building owned and occupied as the headquarters of the Washington Federation of Churches, representative of the Protestant denominations in the city, and the National Catholic Welfare Association, which houses the administrative offices of all local activities of the Catholic Church and is presided over by the archbishop, and that portion of the Methodist Building which contains the administrative offices of that church, are institutions of the type which this language is intended to cover. It is not intended that institutions which have no connection with local problems or local activities, in some form or other, should be exempted, but the committee do[es] not attempt to define the ramifications of such activities as long as they embrace the District of Columbia.

Finally, on the matter of Congressional legislative history, we must consider, in construing section 1(h) broadly or restrictively, the implications involved in the fact that Congress has, time and again, seen fit to grant specific tax exemptions to organizations, by name, by what may be classed

as "special legislation". We may start with the ten organizations listed in section 1(k) of the Act of December 24, 1942. After the general exemptions for art galleries, libraries, "public charity" (the issue at bar), hospitals, and education, the Act continues --

(k) Buildings belonging to and used in carrying on the purposes and activities of the National Geographic Society, American Pharmaceutical Association, The Medical Society of the District of Columbia, the National Lutheran Home, the National Academy of Sciences, Brookings Institution, the American Forestry Association, the Carnegie Institution of Washington, the American Chemical Society, the American Association to Promote the Teaching of Speech to the Deaf, and buildings belonging to such similar institutions as may be hereafter exempted from such taxation by special Acts of Congress.

In 1943, the American Tree Association was added to the list of "similar institutions" in the above section 1(k) by the Act of April 9, 1943, 57 Stat. 61, ch. 41, section 1. Other post-1942 special legislative exemptions are: the Disabled American Veterans (former owner of the property here in question), the Colonial Dames, Amvets, VFW, National Woman's Party, AAUW, National Guard Association, and Woodrow Wilson House. See Code sections 47-801a - 1 and 2, and 47-831 - 836 inclusive. The enactment of special legislation continues. See P.L. 90-459, effective July 1, 1968, exempting the land,

improvements and furnishings of the Colonial Dames of America. Pre-1942 special exemptions, preserved by the general terms of section 1(e) of the Act, include a variety of other property, for example, property of the Luther Statue Association, the Daughters of the American Revolution, the Society of the Cincinnati and the Daughters of 1812. Code sections 47-812, 47-821 to 825 inclusive, 47-830, and 47-826.

The identical Committee Reports "Defining Real Property Exempt from Taxation, District of Columbia", supra, show that section 1(k) was incorporated in the Act in order "that there be no misunderstanding" in regard to the exemption of the named "institutions" as educational institutions (H.R. Report No. 2635, p.3):

* * * It is necessary in some of these cases that educational work in a broad sense be resorted to in order to complete the work of the particular institution. Several organizations of this character are specifically named in the bill. These institutions are professional in character, some educational, and others dedicated to the advancement of the various sciences. They are national headquarters of national organizations. They are housed in magnificent buildings, worthy of the organizations they represent. Their purpose is to gather information and data to be furnished in one form or another to the public in general, but specifically to the membership which comprises their organizations. The income from such memberships helps

to maintain the institution in Washington. Many well-known and reliable magazines and trade journals are printed either in Washington or elsewhere as the result of data compiled by the staff maintained by such organization (sic) in this city, and income from which is also applied to the maintenance of staff and property.

The naming of certain specific exemptions thus took care of some of the organizations ("institutions") which considered that they had a problem at the time of the 1942 Congressional hearings, and preserved their special interests. Congress thus specifically used one of the two procedures by which exemption may be obtained: exemption "by special Acts of Congress". This was done "in order that there may be no misunderstanding". Nothing in such Congressional action derogates the other procedure: construction by the taxing authorities and the courts of the exemptions given in general terms by subdivisions (f) through (j) of section 1 of P.L. 846.

Summing up, there are no indications from the legislative history that the concept "public charity" in section 1(h) of the Act is to be narrowly construed if, by legal definition, petitioner qualifies as such; it is reasonably clear that Congress eliminated the quid pro quo theory of exemption in construing that section; the hearings indicate that the proper phrasing of section 1(h) was a matter of difficulty, and

deliberately left as a broad generality; and insofar as buildings which are the "administrative headquarters" of national organizations with local involvements "in some form or other" are concerned, they are to be exempted or not exempted, on an ad hoc case-by-case basis, depending on whether or not they qualify under the broad provisions "enumerated in the preceding subparagraphs" including section 1(h). Report No. 2635, supra.

Paraphrasing the language of the court, en banc, in the context of governmental immunity, in Spencer v. General Hospital, etc., ____ App. D.C. ____ (CADC No. 21,493, decided November 10, 1969) slip opinion p. 8, it may be said that:

Until the Congress addresses itself to a comprehensive effort to identify the classes of exempt charities more particularly, it will be for the courts here, as they are doing elsewhere, to make those discriminating judgments.

Legal definition of "charity". Some of the authorities more directly in point, discussed infra, take their starting point directly or indirectly from Pennsylvania Co. for Insurance, etc. v. Helvering, 62 App. D.C. 254, 66 F.2d 284 (1933), construing the Federal estate tax exemption for bequests to corporations exclusively "religious, charitable, scientific, literary or educational" (including prevention of

cruelty to children or animals). A bequest to the American Anti-Vivisection League was there held exempt, as one to a "corporation organized and operated exclusively for a charitable purpose", after an extensive review of cases involving the liberal definitions of "charitable trusts" in English and American law. 62 App. D.C. at 255 - 257. Since the "propagation" of the views of the League "are animated by a desire to advance the common weal, it must be conceded the object is charitable unless it violates a public law or a fixed custom having the effect of law. * * *", 62 App. D.C. at 258.

This same broad line of reasoning was adopted in the International Reform Federation case, supra, where Chief Justice Groner, after a full review of the facts concerning the Federation's activities against liquor, the white slave traffic, harmful drugs "and kindred evils in the United States and throughout the world", commenced his discussion of the law as follows (citations omitted, 76 App. D.C. at 284):

Counsel for the Board insist that, in order to be classified as a charitable corporation, it is necessary that appellant show that its principal objectives are to provide for the poor, the sick, and the needy, but we think this is too narrow and restricted a formula. In Commissioner v. Pensel, Lord MacNaghten said that charity, in its legal sense, comprises four principal divisions --

trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. And we know of no modern case in which the definition has been confined strictly to the enumeration found in the Statute of Elizabeth. On the contrary, as the California Court said, " * * * the differing condition, character, and wants of communities and nations, change and enlarge the scope of charity, and where new necessities are created new charitable uses must be established."

In reaching the conclusion that the "primary and hence the exclusive purpose [of the organization] is religious, charitable, or educational" within the meaning of the exemption, the majority opinion cites and refers at length to cases involving charitable trusts, Federal estate tax exemptions, and Federal income tax exemptions. Senior Circuit Judge, then Justice Miller, dissenting, stresses the inappropriateness of a broad definition of "charitable" where six other classes of organizations exempt from Social Security taxes are contained in the same statutory provision. 76 App. D.C. at 287.

In Government Services v. District of Columbia, 88 App. D.C. 360, 189 F.2d 662 (1951) cert. den. 342 U.S. 828, the corporation which operates the government cafeterias and

recreational facilities claimed exemption from D. C. franchise, motor vehicle and personal property taxes on the ground that it is "an exclusively charitable organization". The court summarized "the sweeping phrases of court opinions referring to charity and charitable in various senses" (88 App. D.C. at 361, quoting from the Pennsylvania Company, etc. case, supra):

* * * Generally they relate to charitable purposes in trusts, and the quotations are of ancient and honorable origin, going back into the days of Elizabeth. This court once said, in a tax case, that the great weight of opinion seems to be that a charitable trust "may be applied to almost anything that tends to promote the well-doing and well-being of social man." And the court, in the same case, used the expression "a desire to advance the common weal" as a test for charity. * * *

Government Services was held not to be a charitable organization; the court stressing the point that many organizations "operated for the public weal in a sense", like the transit company, are not charitable in the sense of the exemption provision. Furthermore, G.S.I. "admittedly makes profits", and "as a matter of tax philosophy" these profits should bear their share of the "burdens of municipal government services". 88 App. D.C. at 362.

District of Columbia v. Friendship House Assn., 91 App. D.C. 137, 198 F.2d 530 (1952) is one of the two authorities dealing directly with section 1(h) of P.L. 846, Code section 47-801a(h). There, respondent's settlement house was held exempt, despite the fact that moderate fees were charged for services to those parents able to pay. The per curiam decision says that the Government Services case, supra, "does not support petitioner's contention that only organizations 'for the relief of the poor' are charitable in a tax sense." The distinction is, that G.S.I. serves "at moderate prices but not below cost", whereas Friendship House "depends on public benevolence to meet expenses". 91 App. D.C. at 138.

The other such case is Catholic Home etc. v. District of Columbia, 82 App. D.C. 195, 161 F.2d 901 (1947), where petitioner owned "a home for indigent old ladies who might otherwise have become public charges", and bought another, operated by a new organization which it created, "for old ladies who were able to contribute something, but not enough to cover the cost of their maintenance and support." (82 App. D.C. at 195.) Held: subsection (h) does not require concurrence of ownership and operation in one institution. In reaching its conclusion, the court quotes Senator McCarran,

"who sponsored the Senate bill and reported it", in 88 Cong. Rec. 9485 (1942) --

The bill embraces 4 classes of property which would be exempt under its terms -- property which is devoted to education, with respect to which no profit inures; property which is devoted to religious purposes, with respect to which no profit inures; property devoted to charity, with respect to which no profit inures; and property which is devoted to science.

At this point, a tentative conclusion can be formulated, subject to further testing by comparison with other decisions on D. C. tax exemptions in pari materia, and further consideration of the quid pro quo thesis. First, the facts recited at the outset show that petitioner's purposes and operations are entirely benevolent and conducive to the public welfare of the nation in general and the District in particular. In an era which bears the consequences of past and continuing spoilation of our open spaces, a broad construction of legislation helpful to the National Parks Association is a natural inclination of all concerned citizens. Second, the cases so far considered, and the legislative history, indicate that there is a latitude for judicial construction of the phrase "purposes of public charity" broad enough to encompass the Association. Congress has not foreclosed, and the courts

have used, a case-by-case approach to the interpretation of the charitable exemption, and there is no indication that the approach by way of requiring the organization to seek special legislation (the approach taken by, e.g., the American Forestry Association, which may or may not resemble petitioner's organization, as well as several organizations which would clearly not qualify under the Act of December 24, 1942) is the only approach, or the judicially preferred approach in close cases.

Cases in pari materia. Cases arising under the exemption provisions of D. C. tax laws other than section 1(h) of the Act of December 24, 1942, importantly substantiate petitioner's claim.

It should first be noted that there is no consistency in the statutory language expressing the exemption or the organizations meant to be included. Compare the section under consideration with Code section 47-1554(d), exemption from income tax (which derives from what is now Section 501(c)(3) of the 1954 Internal Revenue Code), and Code section 47-1208, exemption from personal property tax, exempting the personal property of "all library, benevolent, charitable, and scientific institutions incorporated under the laws of the

United States or of the District of Columbia and not conducted for private gain." Note also that there is no stated or apparent reason why a given organization ("institution", in the statutory language, means inter alia "organization", see section 1(k) of P.L. 846) should be exempt from, e.g., income tax or personal property tax and not exempt from real estate tax. So far as appears, the differences in statutory language expressing the exemption are purely fortuitous.

The construction of the personal property tax exemption furnishes the case most nearly in point to the case at bar.

In District of Columbia v. National Wildlife Federation, 93 App. D.C. 387, 214 F.2d 217 (1954), the nationwide Federation for the advancement and conservation of wildlife was held exempt from D. C. personal property taxes as a "scientific institution", affirming the D. C. Tax Court. Its headquarters in D. C. employed 55 persons serving agencies, societies, clubs and individuals in 45 states, and published the bi-weekly "Conservation News". The District there contended, as it does in the present case, that the exemption did not apply because "the activities of the Federation within and for the benefit of the District are not a material part of its total work and do not relieve the local government of a burden it otherwise would have". In an opinion which sharply narrows and for

purposes of the case at bar eliminates this, the quid pro quo theory that the institution is exempted only if it performs a service to the local public, the court said (93 App. D.C. at 389) --

Accepting, therefore as a fact that the Federation's District activities are relatively minor when measured in terms of purely local benefits, we must reject the District's legal conclusion that this forecloses the exemption. While of course the statute granting the exemption is due to a Congressional purpose to aid the public, this does not require a scientific institution to show that it performs a service of substantial character which otherwise the District government or any other, would actually assume. Since the Federation is incorporated under the laws of the District of Columbia, is not conducted for private gain, and is truly a scientific institution, it qualifies for the exemption under the statute. (Citing the Catholic Education Press case, infra.)

The opinion considers the "colorable support" for the quid pro quo thesis found in the National Rifle Assn., Mt. Vernon Seminary, Government Services and Washington Chapter, etc. cases, supra and infra, and adopts the "view reflected" in the Catholic Education Press case, infra, "on the assumption that the scientific character of the institution, accompanied with the other statutory requisites, calls the exemption into effect." 93 App. D.C. at 390:

* * * We reaffirm that position. We add that the work of the Federation, which has been described not only places it literally in the category of scientific institutions but is of a public character. Not only is there the absence of private gain but there is the presence of public benefit through the preservation and development of natural resources of wildlife within the nation.

Respondent, in the case at bar, admits that the "nature of the activities and purposes of the National Wildlife Federation are very similar to petitioner's", but distinguishes the case as one where the personal property tax exemption language "does not contain the all-important 'principally in the District of Columbia' phrase" of section 1(h) of the Act, and as one in which the statute specifically referred to scientific institutions. (Br. 7 - 8.) As we have seen, in the case at bar, (1) the quid pro quo thesis is laid to rest by the legislative history of section 1(h) of the Act of December 24, 1942, as well as the Wildlife Federation case, which on this point is indistinguishable from the case at bar, and (2) a broader definition of "charitable" may be permissible in construing legislative exemptions that do not contain other customary descriptive adjectives, such as "benevolent", or "scientific".

Note that the personal property tax exemption provision, supra, does not contain an exemption for the personal property of "educational" institutions. In ordinary parlance, certainly the National Wildlife Federation is educational rather than scientific, i.e., it operates to inform and educate rather than to systematize knowledge.

The Catholic Education Press case referred to above, 91 App. D.C. 126, 199 Fed. 176 (en banc, 1952), cert. den. 344 U.S. 896, establishes that given descriptive adjectives such as "scientific" are not restrictively defined to deny exemptions to otherwise qualifying organizations. There, an organization publishing books on education, religion, history and logic, distributing spelling books and books on music and phonography records, and publishing the monthly "Catholic Educational Review", was held to be a "scientific institution" within the meaning of the personal property tax exemption. Of course, in a literal sense, the Press is, on the facts above recited, an educational organization. The syllogism used by the court is: the Press, a separate corporation, is really part of the Catholic University of America, the University advances or promotes knowledge, and this "is the English rendering of 'science'." 91 App. D.C. at 128 and footnote 2.

Judge Edgerton, dissenting, stresses the meaning of "scientific" in ordinary usage and the actual separateness of the Press from the University. 91 App. D.C. at 130 - 131.

* * * * *

Other cases peripherally involved should be noticed.

D. C. v. Mount Vernon Seminary, 69 App. D.C. 251, 100 F.2d 116 (1938), held petitioner exempt from real and personal property taxes under the pre-1942 statutes, as an educational institution not for private gain; the court citing petitioner's exemption from Federal income taxes, and, significantly, expanding in very general terms on its own concept of good public policy, including the thought that, "It is necessary in a democracy that all children, including those of the wealthy and socially correct, shall be educated." 69 App. D.C. at 254, see also 253 - 255.

Hazen v. National Rifle Assn., 69 App. D.C. 339 (1938), held the Association not to be exempt from personal property taxes; its purposes and activities were not primarily educational. National Rifle Assn. v. Young, 77 App. D.C. 290,

134 F.2d 524 (1943) held the Association not to be exempt
from unemployment contributions.^{3/}

Washington Chapter, etc. v. District of Columbia,
92 App. D.C. 139, 203 F.2d 68 (1953), held that the local
chapter of the American Institute of Banking, which educated
members of Washington's banking industry in "the theory and
practice of banking" and attendant principles of law and
economics, was not exempt as a school, college or university
not for private gain. Section 1(j) of the Act of December 24,
1942, Code section 47-801a(j). It is, of course, an organiza-
tion "devoted to the improvement of a purely private group",
whereas

* * * The public is interested in, and
grants a tax exemption for, the education
of its members, because they are men, women,
and children, not because they happen to be
affiliated with the District of Columbia
Bankers Association. (92 App. D.C. at 141
and 143.)

^{3/} Such contributions are there held to be taxes, thus
eliminating any claim that the International Reform
case, supra, is not authoritative because it is not
a tax case, see Pet. Br. 4 and Reply Br. 1 - 2.

District of Columbia v. Y.M.C.A., 95 App. D.C. 179, 221 F.2d 56 (1955), held that a special act relieving taxpayer from accrued taxes applied to enable recovery of monies paid to redeem taxpayer's property at a tax sale, after extensive review of the legislative history.

Natn. Capital Girl Scout Coun. v. District Bd., 231 F.S. 546 (1964), Judge Holtzoff held, after the amendment of Code 46-301(b)(5)(G), (see the International Reform Federation case, supra) the Girl Scouts to be exempt from Social Security taxes as an organization operated exclusively for charitable purposes. In reaching this result, the Court held it must apply a "broad definition" of "charity"; noted that the organization is exempt from U. S. income tax as a charity; and found that the word "exclusively" is not to be taken literally when the "educational" activities of the Girl Scouts are merely incidental. 231 F.S. at 547.

Finally, in District of Columbia v. Sport Fishing Institute, 102 App. D.C. 277, 252 F.2d 841 (1958), an organization for the financial and commercial benefit of fishing tackle manufacturers was held not exempt from personal property taxes, because it is conducted for the private gain of its organizers.

In conclusion on this and the preceding topical headings, it is evident that in the jurisdiction, the reviewing court has looked into the essential nature of the organization claiming exemption, and has not been constrained, in granting exemptions, by mere verbal or dictionary distinctions.

"Charity" can be read broadly to include reform. "Science" can include Catholic education and the fostering of wild life. Along the route to a decision in many cases, petitioner's status under exemption provisions of other laws is referred to, and therefore should be considered here:

As shown in Exhibit 3, supra, petitioner is an exempt organization under Section 501(c)(3) of the Internal Revenue Code. In its capacity as an independent agency of the D. C. Government this court can and does note, overruling respondent's objections (Br. 8 - 9), that petitioner is exempt from D. C. income taxes under Code section 47-1554(d), and exempt from sales and use taxes under Code section 47-2605(c), as defined in Code section 47-2601-18.

"Tax exemptions are to be strictly construed." This rubric is found in several of the controlling authorities. National Rifle Assn., supra, 77 App. D.C. at 291; Mount Vernon Seminary, supra, 69 App. D.C. at 254; Washington Chapter, etc.,

supra, 92 App. D.C. at 141; Combined Congregations v. Dent, 78 App. D.C. 254, 255, 140 F.2d 9, 10; Hebrew Home v. D. C., 79 App. D.C. 64, 65, 142 F.2d 573. In the Mount Vernon Seminary opinion, the reference is balanced by references to the "principle" that it "does not justify the interpolation" of qualifications into the exemption statute (citing three cases), and to the rule that "the language of an exemption statute must be given its ordinary meaning." (citing ten cases). (id.) In the four other cases in which it appears, the decision denying tax exemption was plainly reached on substantive considerations rather than on strict definition of the words of the statute. The "principle" is not mentioned in the ten other authorities considered in this opinion.

In the Wildlife Federation case, Judge Fahy suggests that where there is "a quasi-public purpose -- a quid pro quo", such as an educational purpose, the exemption will not be strictly construed, and indicates that the quid pro quo rule applies where special interests seek exemption (93 App. D.C. at 390):

* * * an exemption may not create inequality in taxation between persons or institutions of a private character by giving the property of one, and not the other, its benefit. But it may aid and encourage a public or quasi-public service through designated types of

organizations, such as library, benevolent, charitable or scientific institutions * * * for no private gain. * * * the public benefit which the government "reasonably might assume" is sufficiently proved when the activity [of the National Wildlife Federation] is in fact scientific and private gain is excluded. (Footnote omitted.)

Actually, the rubric, or rule, has little or no foundation in fact in the decided cases. District Judge McLaughlin, in the opinion of the lower court in the Y.M.C.A. case considered supra, found in 124 F. Supp. 449, 452, puts it thus:

* * * Statutes providing for exemptions from taxation of educational or benevolent organizations or similar organizations, unlike other tax exemption statutes, are to be construed liberally. *Helvering v. Bliss*, 293 U.S. 144, 55 S.Ct. 17, 79 L.Ed. 246; *Faulkner v. Commissioner*, 1 Cir., 112 F.2d 987; *United States v. Proprietors of Social Law Library*, 1 Cir., 102 F.2d 481; *Cochran v. Commissioner*, 4 Cir., 78 F.2d 176; *Roche's Beach, Inc. v. Commissioner*, 2 Cir., 96 F.2d 776; *Bohemian Gymnastic Ass'n v. Higgins*, 2 Cir., 147 F.2d 774, 777, and cases cited therein.

"Charitable" under the Federal income tax. Charitable contributions, as defined, alone are deductible for purposes of the Federal income tax. 1954 Internal Revenue Code, section 170(a)(1). However, the term "charitable contribution"

is broadly defined to include, inter alia, gifts to organizations "for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals." id. section 170(c)(2)(B). This, then, is a prime example of the broad sweep of the word "charity" in the writing of tax exemption legislation.

The definition of organizations exempt from Federal income tax is very broad. I.R.C. section 501(c) states the general categories, including "charitable" organizations. I.R.C. Regulations section 1.501(c)(3)-1(c)(2) explains what is meant --

Charitable defined. The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency. The fact that an

organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "action" organization of any one of the types described in paragraph (c)(3) of this section.

The Federal income tax statutes, a strong influence in molding our use of words in common parlance and in technical construction of the D. C. tax statutes, thus squarely supports the broadest construction of the word "charity" in our D. C. Code.

Conclusion

This has been a difficult case, and a close case. The decision would have gone to respondent if at any point in the research -- legislative history, precedents, analogies, other exemption provisions showing legislative purpose -- a reasonable basis had been found for strict construction of section 1(h) of the Act of December 24, 1942. Considerations

of current tax policy (brought up in many or most of the authorities, notably Mt. Vernon Seminary, supra), militate against tax exemptions. See L. L. Ecker-Racz, "Financing the District of Columbia", report commissioned by the Government of the District of Columbia, August 30, 1968, chapter 5, "Property Taxation", pp. 26 - 28:

The growing exemption of property from taxation is a national problem, but no other city suffers from it on a scale that even approaches the situation here. * * * over half of the land area and probably half of the real estate value in the District is exempt from taxation. * * *

The exempt non-profit group includes the conventional "education, religious and charitable" activities serving the local community and generally exempted in most cities on the ground that they serve a desirable public purpose. However, in addition to the type of exempt properties found in most communities, the District often is the home of the national headquarters of the exempt organizations frequently housed in monumental structures in the most highly priced locations where they pre-empt portions of the very limited space available in the District for taxable private enterprise. The tax exemption of these properties obliges the District to bear a tax loss burden that is more properly borne by the residents of a larger geographical area, perhaps the entire Nation. * * *

Dr. Ecker-Racz cites the fact that even local charitable institutions require local governmental services and should

pay for them; points out that some exempt organizations (Ford Foundation in New York, Harvard University in Cambridge) voluntarily contribute to local government support; and indicates that at least "user charges", related to the cost of municipal services, should be imposed. Op. cit., pp. 28, 53. Dr. Ecker-Racz figures that \$546 million of "educational, charitable and religious" property is tax-exempt in the District, and an additional \$200 million "by explicit Congressional mandate". "If it is desired to assist these organizations financially in recognition of their public service, such encouragement is better provided through an open appropriation of funds than indirectly through a hidden tax exemption." Op. cit., pp. 27 - 28.

On the other hand, Dr. Ecker-Racz is not addressing the courts, but the legislative authorities. He seeks general revision of exemption legislation, not restrictive interpretation of existing law. And there is no basis for such an interpretation in the case of an organization dedicated solely to the protection of our national and local natural environment, in an age when "Our environment, which took hundreds of millions of years to be built, is in danger of being destroyed in our

generation." Statement attributed to Charles A. Lindbergh by William Steif, Columnist, Washington Daily News, October 30, 1969, p. 23.

Decision for petitioner will be entered under Rule 30.

s/ Robert M. Weston
Robert M. Weston
Judge

* * * *

FILED
DEC 9, 1969

DOCKET NO. 2069

D E C I S I O N

This proceeding having come on to be heard on the pleadings, testimony and briefs of the parties, and the findings of fact and conclusions of law herein having been set forth in the opinion and order of the court filed December 2, 1969,

IT IS ADJUDGED AND DETERMINED, That

1. Said opinion and order is amended by (a) deleting the words "and paid" from the second sentence, first paragraph, p. 1, and (b) substituting "Decision will be entered for petitioner" for concluding sentence, p. 26.

2. Decision is hereby entered for petitioner.

s/ Robert M. Weston
Robert M. Weston
Judge

* * * *

FILED
DEC 17, 1969

DOCKET NO. 2069

MOTION TO MAKE SEPARATE FINDINGS
OF FACT, TO VACATE DECISION IN
FAVOR OF PETITIONER, AND FOR ENTRY
OF DECISION IN FAVOR OF RESPONDENT

Respondent District of Columbia, pursuant to Rule 12 of the Rules of this Court, moves the Court to make separate findings of fact in its opinion filed December 2, 1969 in the above-entitled case, so as to read as hereinafter set forth and, based upon such separate findings, to vacate the decision of this Court, entered December 9, 1969, in favor of petitioner, and to enter a decision in favor of respondent. The grounds for this motion are as follows:

1. This Court's "Opinion and Order" of December 2, 1969 does not contain " * * * separate findings of fact and conclusions of law * * * ", as required by D.C. Code, 1967, sec. 47-2403.

2. The "Opinion and Order" above referred to does not accord with the evidence adduced at the hearing of this case.

3. The entry by this Court on December 9, 1969 of a decision in favor of petitioner does not accord with the law and the evidence applicable in this case, and such decision should therefore be vacated.

4. The Findings of Fact below set forth, which respondent moves this Court to separately make, and the law applicable to this case require the entry of a decision in favor of respondent.

The Findings of Fact which respondent moves this Court to separately make in its "Opinion and Order" are as follows:

"1. The tax in controversy herein is real property tax on Lot 132, Square 153 in the District of Columbia for the fiscal year 1969 in the amount of \$2,706.00. Pursuant to D.C. Code, 1967, Section 47-801e, said tax has not been paid.

"2. Petitioner National Parks Association is the owner of said Lot 132 in Square 153 in the District, and such lot is improved by a four-story-and-basement structure, the major part of which was, at the time of hearing herein, utilized by petitioner as its national headquarters.

"3. Petitioner, a membership organization concerned with the protection of the several national parks of the United States, functions primarily through the publication of a monthly magazine which is distributed to all members.

"4. Petitioner's magazine, called 'National Parks Magazine', publishes articles of a general scope in the area of conservation, but technical material occasionally appears therein. The magazine's general articles are devoted primarily to the units of the National Parks System as a whole, with occasional articles on units of the National Capital Parks System, which latter system includes parks in the Washington Metropolitan Area.

"5. Less than ten per cent. of the articles in National Parks Magazine are devoted to the National Capital Parks System.

"6. Petitioner also publishes special materials on particular conservation topics and problems two or three times a year; at the time of hearing in this case, the most recent of these special materials which dealt with a District of Columbia related conservation problem was one published in early 1968, entitled 'The Potomac River Estuary', which had to do with the water supply of the entire Washington Metropolitan Area, not just with that of the District.

"7. Membership in petitioner is voluntary, there being, as of the time of hearing herein, approximately forty thousand members.

"8. Only between two and three hundred members of petitioner reside in the District of Columbia.

"9. Petitioner maintains a 'Conservation Education Center', not at its headquarters building, but at the federally-owned Smithsonian Institution, at which free lectures are given and free films are shown to the public on conservation topics; in addition, field trips out into the environs of the Washington area are sometimes made.

"10. Petitioner is a national organization both in membership and objectives, and is concerned with the national parks system of the United States as a whole, although a few national park units out of a total of approximately 250 are located within the District.

"11. The fact that petitioner was, as of the time of hearing of this case, exempt from Federal and District income taxes and from District sales and use taxes is not relevant to this proceeding because such fact pertains to other types of tax exemptions granted under statutory provisions entirely different from the District real property tax exemption statute.

"12. Petitioner is not organized or operated for private gain.

"13. Petitioner's activities and objectives have a connection with the District of Columbia and its residents which is only slight, so that such relative slightness dictates that the building belonging to and operated by petitioner, for which real property tax exemption is sought, is not one 'used for purposes of public charity principally in the District of Columbia.'

"14. Petitioner, its activities and objectives, including its publication National Parks Magazine, are, according to petitioner's own witnesses, educational and scientific, rather than charitable.

"15. Petitioner is a completely independent, private, non-profit, public-service organization, which is educational and scientific in character.

"16. The buildings belonging to and operated by educational and scientific institutions which are not organized or operated for private gain, are not exempt from District of Columbia real property taxation.

"17. Petitioner is not an organization or institution whose real property is used for purposes of public charity

principally in the District; rather, petitioner is an educational and scientific organization or institution and, hence, the real property upon which its headquarters building is situated is not exempt from District real property taxation."

* * * *

FILED
JAN 6, 1970

DOCKET NO. 2069

ORDER ON MOTION FOR RECONSIDERATION

On December 17, 1969, respondent filed its "Motion to Make Separate Findings of Fact, to Vacate Decision in Favor of Petitioner, and for Entry of Decision in Favor of Respondent", which is in substance a motion for rehearing and reconsideration of the Opinion and Order herein issued December 2, 1969, and the recasting in form of the separate findings of fact and conclusions of law contained therein, as referred to in the Court's decision of December 9, 1969.

Said Motion sets forth no facts or law not fully considered in said decision, nor does any reason appear or exist for recasting the form thereof. See, in general, Davis, Administrative Law Treatise. Wherefore,

IT IS ORDERED, that the Motion for Reconsideration be,
and it hereby is, denied.

s/ Robert M. Weston
Robert M. Weston
Judge

* * * *

FILED
FEB 4, 1970

DOCKET NO. 2069

PETITION FOR REVIEW OF A DECISION
OF THE DISTRICT OF COLUMBIA TAX COURT

To the Honorable Chief Judge and Circuit Judges of the United
States Court of Appeals for the District of Columbia Circuit:

1. The District of Columbia petitions for a review,
by the United States Court of Appeals for the District of
Columbia Circuit, of a decision of the District of Columbia
Tax Court made in the above-entitled case.

2. The decision of which review is sought cancelled
an assessment of real property tax against property belonging
to petitioner National Parks Association for the fiscal year
1969, in the amount of \$2,706.00.

3. The Final Decision of the Tax Court was entered on January 6, 1970, upon said Court's denial of the District of Columbia's "Motion to Make Separate Findings of Fact, to Vacate Decision in Favor of Petitioner, and for Entry of Decision in Favor of Respondent", filed December 17, 1969.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,026

DISTRICT OF COLUMBIA,]
]
Appellant,]
]
v.]
]
NATIONAL PARKS ASSOCIATION,]
]
Appellee.]

ON PETITION FOR REVIEW OF A DECISION
OF THE DISTRICT OF COLUMBIA TAX COURT

BRIEF FOR APPELLEE NATIONAL PARKS ASSOCIATION

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 1 1969

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July 1, 1970

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,026

DISTRICT OF COLUMBIA,]
]
Appellant,]
]
v.]
]
NATIONAL PARKS ASSOCIATION,]
]
Appellee.]

ON PETITION FOR REVIEW OF A DECISION
OF THE DISTRICT OF COLUMBIA TAX COURT

BRIEF FOR APPELLEE NATIONAL PARKS ASSOCIATION

QUESTION PRESENTED

Was the District of Columbia Tax Court correct in holding the headquarters building and surrounding grounds of the National Parks Association, a District of Columbia non-profit corporation exempt from Federal and District income taxation and District sales and use taxes, exempt from real property taxes under D.C. Code §47-801a (h) ?

STATUTORY PROVISIONS INVOLVED

D.C. Code §47-801a exempts from real property taxation:

- "(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia."
- "(r) (1) Grounds belonging to and reasonably required and actually used for the carrying out of the activities and purposes of any institution or organization..."*

STATEMENT OF THE CASE

This appeal is before the Court on petition by the District of Columbia pursuant to Rule 18(b), District of Columbia Circuit, to review the D. C. Tax Court's decision that the headquarters building of the National Parks Association is exempt from real property taxation under D.C. Code §47-801a (h). The Tax Court's decision was entered on December 9, 1969** and modified on December 17, 1969.*** The District then moved to make separate findings of fact, vacate the decision in favor of the taxpayer and for entry of a decision in its favor (App. 74-79), which motion the Tax Court denied on January 6, 1970 (App. at 79-80). The District's petition for review by this Court was filed on February 4, 1970.

*Since no question has been raised as to the use made of the land on which the Association's building is situated, the tax status of the ground depends on that of the improvements. Both are treated together in this brief and are referred to as "building."

**The Tax Court's opinion and order are set forth in Appellant's Appendix ("App.") at 36-73.

***The amendments (App. 73-4) merely deleted language from the original opinion indicating that the tax had been paid and eliminated the requirement for an accounting under D.C. Tax Court Rule 30. In fact, the Association sought relief in the Tax Court without paying the amount assessed (\$2706), as authorized by D.C. Code §47-801e, making an accounting unnecessary.

The National Parks Association is a non-profit corporation organized under the laws of the District of Columbia. Petitioner's Exhibit ("Pet. Ex.") 1. Founded in 1919 by Stephen Mather, first director of the National Park Service, the organization's present membership exceeds 40,000 (App. 12). As the Tax Court found, the Association "operates on a narrow margin of receipts (mostly membership dues and contributions) over expenses (membership solicitations, salaries, and professional services retained, inter alia), and any 'profit' is 'always re-budgeted for the next year back into the educational and scientific work of the organization (App. 40, Pet. Ex. 2).'"

The Association is dedicated to the protection of our national parks and monuments and to the preservation and restoration of the natural environment (App. 7, 26, 36). Towards these ends, it publishes an educational magazine (circulation, more than 40,000)* which "describes the nature and purpose of the national parks system and similar natural areas" (App. 7), works with governmental agencies, such as the National Park Service, on parks and conservation matters (Ibid.) and, in general, endeavors to inform the public as to conservation problems and to develop and encourage environmental programs.**

*The magazine is sent to Association members (App. 25-6). Some copies are distributed free and not more than a few dozen are sold (App. 26).

**Consistent with its Federal tax exempt status, the Association does not engage in lobbying or other disqualified legislative efforts (App. 10).

While its activities are national (and international) in scope, the Association has been deeply involved in conservation programs particularly affecting the District of Columbia. It sponsors the Conservation Education Center, a series of free lectures, motion picture exhibitions and field trips developed in cooperation with the D.C. public school system and held at the Smithsonian Institution (App. at 7-8).^{*} The Association has made engineering studies of the District's water supply problems (App. 9). It has participated in the efforts to protect Glover Archibald Park, located within the District (App. 10), the old C&O Canal National Historical Park (App. 18) and the National Capital Parks System (App. 9-10). The Association has supported technical studies of crowd distribution and other problems confronting Assateague National Seashore, frequently visited by many D.C. residents for recreational purposes (App. 11). Articles on District conservation issues are published in the Association's magazine (App. 25, 30-32). And, the Association currently is developing at its headquarters building a conservation library for general public use (App. 8). In short, and as Mr. Smith testified, the Association "tend[s] to concentrate a little more closely on the problems of the District of Columbia and its environs" (App. 25).

The building in question is located at 1701 18th Street, N.W. It houses the Association's officers and staff, who spend virtually all of their working time (except for employment-related travel) in the District (App. 15). It is open to the public (App. 11).

^{*}Mr. Anthony Wayne Smith, President and General Counsel of the Association, testified that announcements of Conservation Education Center programs are distributed to all of the public schools in the District (App. 7).

The National Parks Association has been granted exemption from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (Pet. Ex. 3). It is also exempt from local income taxes under D.C. Code §47-1554(d) and from District sales and use taxes pursuant to D.C. Code §47-2601-18 (App. 66).

On appeal, the District concedes that the National Parks Association is "not organized or operated for private gain" (Appellant's Brief ("App. Br.") 7). Rather, it argues that the Association's property fails to meet the statutory standard assertedly because: (1) it is not used for purposes of "public charity" and (2) such use to which it is put does not benefit "principally" the District of Columbia. These contentions were fully considered and explicitly rejected by the Tax Court. Appellee submits that they should be denied by this Court.

ARGUMENT

I. The Association's Headquarters Building Is Used For Purposes Of Public Charity

Despite the fact found by the Tax Court, and not contested by the District, that the Association's "purposes and operations are entirely benevolent and conducive to the public welfare" (App. 57), the District would deny exemption assertedly because "the Association must be held to be an educational and scientific institution, rather than, as claimed, one devoted to public charitable purposes" (App. Br. 14-18).

This position is founded on the fallacious premise that the terms "educational and scientific" and "charitable" define mutually exclusive

categories of exemption. Without offering a definition of "charitable" and without explanation or support, save for the hoary strict construction of exemption rule (App. Br. 14-18), the District maintains that an organization may not be both "educational and scientific" and "charitable." This contention, as the Tax Court found, is in conflict with decisions of this Court and the analogous Federal standard.

In a line of cases stretching back to 1933, the Court of Appeals has defined "charitable" to encompass non-profit organizations operated to benefit the public in general (rather than private entrepreneurs), whether by means of educational, scientific, welfare or other benevolent activities. That definition plainly embraces the National Parks Association.

Specifically, this Court in Pennsylvania Co. For Insurance On Lives v. Helvering, 62 U.S. App. D.C. 254, 66 F. 2d 284 (1933) found that the American Anti-Vivisection League was "organized and operated exclusively for a charitable purpose" (62 U.S. App. D.C. at 255-7) because "animated by a desire to advance the common weal" (Id. at 258). Of the organization's purpose, the Court said that "it must be conceded the object is charitable unless it violates a public law or a fixed custom having the effect of law..." (62 U.S. App. D.C. at 258). Similarly, in International Reform Federation v. Unemployment Compensation Board, 76 U.S. App. D.C. 282, 131 F. 2d 337 (1942), cert. denied, 317 U.S. 693 (1942), the Court held an organization established to promote "higher codes of morality and manners throughout the world" (76 U.S. App. D.C. at 287) exempt from social security taxes. Finding that the Federation was "organized

and operated exclusively for religious, charitable, scientific, literary, or educational purposes," the Court rejected as "too narrow and restricted a formula" the District's argument that only corporations whose "principal objectives are to provide for the poor, the sick, and the needy" may be classified as charitable (76 App. D.C. at 284). Chief Justice Grover explained:

"In *Commissioner v. Pensel*, Lord MacNaghten said that charity, in its legal sense, comprises four principal divisions - trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding headings. And we know of no modern case in which the definition has been confined strictly to the enumeration found in the Statute of Elizabeth. On the contrary, 'the differing condition, character, and wants of communities and nations, change and enlarge the scope of charity, and where new necessities are created new charitable uses must be established.'" (*Ibid.*)

The Court has demonstrated similar latitude in construing "charitable" for purposes of real property exemption. Thus, in *District of Columbia v. Friendship House Association*, 91 U.S. App. D.C. 137, 198 F. 2d 530 (1952), this Court upheld the local settlement house's exemption, notwithstanding the fact that those able to pay were charged moderate fees. The decision, *per curiam*, rejects the District's contention "that only organizations 'for the relief of the poor' are charitable in a tax sense" (91 U.S. App. D.C. at 138). Since Friendship House is a non-profit organization, "depends on public benevolence to meet expenses" (*Ibid.*) and is operated for the benefit of the public, it was

held entitled to real property tax exemption. See also, Catholic Home For Aged Ladies v. District of Columbia, 82 U.S. App. D.C. 195, 161 F. 2d 901 (1947).

Profit-making corporations are not regarded as charitable, even if their activities benefit the public at large. See, Government Services, Inc. v. District of Columbia, 88 U.S. App. D.C. 360, 189 F. 2d 662 (1951), cert. denied, 342 U.S. 828 (1952), holding that provision for profit of inexpensive meals and recreational facilities for government workers is not a "charitable" activity. And, similarly, non-profit corporations operated to advance the commercial interests of their organizers, rather than to benefit the general public, are not treated as charitable for tax purposes. See, District of Columbia v. Sport Fishing Institute, 102 U.S. App. D.C. 277, 252 F. 2d 841 (1958); Washington Chapter of American Institute of Banking v. District of Columbia, 92 U.S. App. D.C. 139, 203 F. 2d 68 (1953).

Although not concerned with the definition of charitable purposes, the Court's opinion sustaining the National Wildlife Federation's exemption from personal property taxes is instructive. District of Columbia v. National Wildlife Federation, 93 U.S. App. D.C. 387, 214 F. 2d 217 (1954). The Federation claimed exemption as a "scientific institution" under D.C. Code §47-1208. Rejecting the District's restrictive reading of the exemption, the Court articulated the policy considerations as follows:

"an exemption of course may not create inequality in taxation between persons or institutions of a private character by giving the property of one, and not the other, its benefit. But it may aid and encourage a public or quasi-public service through designated types of organizations, such as library,

benevolent, charitable or scientific institutions, conducted for no private gain. Using the provision applicable to the instant case as illustrative, the public benefit which the government 'reasonably might assume' is sufficiently proved when the activity is in fact scientific and private gain is excluded"(93 U.S. App. D.C. at 390).

In short, non-profit organizations bestowing a public benefit solicited by public policy and not operated in competition with private profit-making institutions are regarded as charitable. Neither the applicable statute, nor the relevant decisions of this Court provide any basis for denying exempt status to an organization carrying out these objectives in part through a program of public education. The protection of our environment and our national parks is a charitable activity under District law.

Further support for this construction is afforded by the analogous provisions of Federal law. Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, exempts charitable and certain other types of organizations from Federal income taxation. The regulations define "charitable" inclusively, to encompass educational, scientific and similar activities. Specifically, I.R.C. Reg. §1.501(c)(3)-1 (c) (2) provides that:

"[T]he term 'charitable' is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate purposes which may fall within the broad outlines of 'charity' as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designated to accomplish any of the above

purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency."

Significantly, the Internal Revenue Service has found the National Parks Association entitled to §501(c)(3) exemption as an "educational and charitable" organization. See Letter, dated February 27, 1959, granting such exemption, a copy of which is reproduced and annexed hereto as Exhibit 1.* While the Federal definition of "charitable" and the IRS ruling as to the Association's conformance with it may not be controlling, the Federal example is entitled to substantial weight in construing the same term as used in the D.C. tax code. As this Court observed in District of Columbia v. Lewis, 109 U.S. App. D.C. 353, 288 F. 2d 137 (1961), "[W]here no policies appear to require otherwise, we have generally, if implicitly, assumed that Congress intended similar construction of both the local and federal tax statutes, thus recognizing the practical convenience gained from having similar tax rules." The District suggests no reason not to follow that sound policy here.

Finally, this result is required not only to bring about needed conformity between Federal and District laws enacted by the same legislature, but to harmonize the District's own tax scheme. As pointed out above, the

*Although this letter ruling was not introduced into evidence during the Tax Court proceeding, the fact that the Association enjoys Federal income tax exemption was established (see, Exhibit 3 and App. at 66).

Association is exempt from D.C. income and sales and use taxes.* Why the Association is properly characterized as an organization "exclusively for religious, scientific, charitable, or educational purposes" under D.C. Code §§47-1554(d) (income taxes) and 2601 (18) (sales and use taxes), but not as a "charitable" corporation under D.C. Code §47-801a (h) (real property taxes) is not explained. The National Parks Association submits that such varying tax consequences are arbitrary and unwarranted. Clearly, it is entitled to be treated as a "charitable" organization within the intendment of D.C. Code §47-801a (h).

II. The National Parks Association's Headquarters Building Is Used For Charitable Purposes "Principally" In the District Of Columbia

The District contends that even if the National Parks Association were a "charitable" organization, its building would not be entitled to exemption, assertedly because the Association's activities do not principally benefit the District of Columbia (App. Br. at 7). Invoking Webster's New International Dictionary (2nd Ed.), the District argues (App. Br. at 8) that "principally" means "primarily" or "chiefly" and that the Association's D.C. activities, viewed in light of its national program, are insufficient under this standard to warrant exemption under D.C. Code §47-801a (h). In so contending, the

*"In its capacity as an independent agency of the D.C. Government," the Tax Court, "overruling respondent's objections," took notice of the fact that the National Parks Association "is exempt from D.C. income taxes under Code section 47-1554(d), and exempt from sales and use taxes under Code section 47-2605(c), as defined in Code section 47-2601-18" (App. at 66). The letter, dated March 12, 1968, granting exemption from District income taxes is reproduced and annexed hereto as Exhibit 2.

District ignores the legislative history, recounted in detail by the Tax Court (App. at 44-52), which clearly establishes Congress' purpose to extend the exemption to national organizations, such as the National Parks Association, with significant local activities.

D.C. Code §47-801a (h) derived from a study conducted by the District Assessor in 1940. See, Hearings on S.2673 (superseded by S.2804), "A Bill To Define the Real Property Exempt from Taxation in the District of Columbia," Before the Senate Committee on the District of Columbia, 77th Cong. 2nd Sess. (1942), hereinafter referred to as "Hearings." The study established that substantial real estate had been exempted erroneously from D.C. real property taxation. Following restoration of such property to the tax rolls, the District Commissioners sought the revision of the exemption laws which eventually resulted in the Tax Act of 1942.

S. 2673, in its original form, adopted the local benefit requirement here advocated by the District (Hearings at 79). Section 3 of that bill would have limited the real property exemption in question to:

"buildings used for purposes of public charity belonging to and operated by institutions which are not organized or operated for private gain. Public charity as contemplated by this Act, means charity which confers benefits on the public, or some portion thereof, of the District of Columbia."

Responding, in part, to complaints of nationwide organizations with headquarters in the nation's capitol (e.g. the Boy Scouts and the Y.M.C.A., Hearings at 79), the bill was amended to delete this "quid pro quo" provision. See, District of Columbia v. National Wildlife Federation, 93 U.S. App. D.C.

at 389, rejecting this theory of tax exemption. And, as reported to the Senate floor as S. 2804, it included the language now set forth in D.C. Code §47-801a (h).

Most significantly, the House and Senate District Committee reports clearly demonstrate Congress' intention to exempt buildings owned by national organizations with significant local programs. See, S. Rep. No. 1634, 77th Cong. 2nd Sess. 3 (1942); H. Rep. No. 2635, 77th Cong. 2nd Sess. 2-3 (1942). Using identical language, both reports explain that:

"Subparagraph (h) [D.C. Code §47-801a (h)] exempts buildings belonging to and operated by institutions which are not organized for private gain and which are used for purposes of public charity principally within the District of Columbia. The word 'principally' has been inserted in this subparagraph in that some of the activities and benefactions of organizations devoted to public charity must, of necessity, reach beyond the confines of the District of Columbia. Such an institution is the American Red Cross, a quasi-governmental agency, designated by the Commissioners of the District of Columbia as a 'charitable organization.' No one could contend that its works of mercy are or could be limited to the District." [Ibid.]

As the Tax Court pointed out "substantially all of the charitable work of the American Red Cross is done outside the District rather than 'some' of its 'activities and benefactions.'" The example cited by the Report lays to rest the idea that Congress meant to exempt only local charities" (App. at 47, emphasis in text). The District has recognized that appellee's local activities are "substantial" in granting the Association exemption from income taxation.

D.C. Code §47-1554(d); Exhibit 2 at 1. It should be evident that the National Parks Association, no less than the American Red Cross, is entitled to real property exemption under D.C. Code §47-801a (h).

Further support for this reading of Congress' intention is found in D.C. Code §47-801a (g) which exempts buildings:

"belonging to organizations which are charged with the administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption...and used as administrative headquarters thereof."

This provision reflects a congressionally-sanctioned policy to exempt from taxation headquarters of organizations whose activities are nationwide in scope but have local application. See, H. Rep. No. 2635, supra, at 6; Conference of Major Religious Superiors of Women, Inc. v. District of Columbia, 121 U.S. App. D.C. 171, 348 F. 2d 783 (1965).

Finally, it should be noted that by special legislation Congress frequently has manifested its willingness to extend the benefit of D.C. real property tax exemption to national organizations having little, if any, direct local activities. See, examples cited by the Tax Court at App. 49-50.

In summary, then, the legislative history of D.C. Code §47-801a (h) and of analogous provisions clearly establishes Congress' purpose to exempt from D.C. real property taxes buildings belonging to national organizations headquartered in the District and benefiting the D.C. community.

In light of the National Parks Association's local activities, recognized by District of Columbia as "substantial," appellee respectfully submits that its building should be held exempt from real property taxation under D.C. Code §47-801a (h).

CONCLUSION

For the reasons stated above, the opinion of the District of Columbia Tax Court holding erroneous the assessment of real property tax against the headquarters building of the National Parks Association was correct and should be affirmed.

Respectfully submitted,

David E. Birenbaum
1700 K Street, N.W.
Washington, D.C. 20006

Attorney for National Parks Association,
Appellee

Of Counsel:

Strasser, Spiegelberg, Fried,
Frank & Kampelman
1700 K Street, N.W.
Washington, D.C. 20006

July 1, 1970

[SEAL]

EXHIBIT 1

U. S. TREASURY DEPARTMENT
WASHINGTON 25

Office Of
Commissioner of Internal Revenue
Address Reply To
Commissioner of Internal Revenue
Washington 25, D.C.
And Refer To

FEB 27 1959

T:R:EO:4
CIN

National Parks Association
2144 P Street, N.W.
Washington 7, D.C.

Gentlemen:

It is the opinion of this office, based upon the evidence presented, that you are exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954, as it is shown that you are organized and operated exclusively for charitable and educational purposes.

Accordingly, you are not required to file income tax returns unless you change the character of your organization, the purposes for which you were organized, or your method of operation. Any such changes should be reported immediately to the District Director of Internal Revenue for your district in order that their effect upon your exempt status may be determined.

You are required, however, to file an information return, Form 990-A, annually, with the District Director of Internal Revenue for your district so long as this exemption remains in effect. This form may be obtained from the District Director and is required to be filed on or before the fifteenth day of the fifth month following the close of your annual accounting period, which ends March 31.

Contributions made to you are deductible by the donors in computing their taxable income in the manner and to the extent provided by section 170 of the 1954 Code.

Bequests, legacies, devises or transfers to or for your use are deductible in computing the value of the taxable estate of a decedent for Federal estate tax purposes in the manner and to the extent provided by sections 2055 and

National Parks Association

2106 of the 1954 Code. Gifts of property to or for your use are deductible in computing taxable gifts for Federal gift tax purposes in the manner and to the extent provided by section 2522 of the 1954 Code.

No liability is incurred by you for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless you have filed a waiver of exemption certificate in accordance with the applicable provisions of such Act. In the event you desire social security coverage for your employees or have any questions relating to the filing of a waiver of exemption certificate you should take the matter up with your District Director of Internal Revenue.

Your attention is called to the provisions of section 501(c)(3) of the Internal Revenue Code of 1954 under which your exemption will be revoked if any substantial part of your activities consists of carrying on propaganda, or otherwise attempting, to influence legislation, or if you participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Failure to file the required information return or to otherwise comply with the provisions of section 6033 of the Code and regulations applicable thereto may result in the termination of your exempt status.

Any reference herein to a provision of the 1954 Code shall be deemed a reference to the corresponding provisions of the 1939 Code.

This ruling supersedes our ruling of March 25, 1927.

The District Director of Internal Revenue for your district is being advised of this action.

Very truly yours,

Chief, Exempt Organizations Branch

EXHIBIT 2

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF GENERAL ADMINISTRATION

Finance Office:
Revenue Division

[SEAL]

Reply To:
Income and Sales Tax Section
Room 2034 Municipal Center
300 Indiana Avenue, N.W.
Washington, D.C. 20001

March 12, 1968

National Parks Association
1701 - 18th Street, N.W.
Washington, D.C. 20009

Gentlemen:

We have examined your application for an exempt status under the provisions of the District of Columbia Income and Franchise Tax Act of 1947, as amended, and it is our opinion that your organization qualifies for exemption under Title II, Section 1 (d), of the Act.

Accordingly, you will not be required to file franchise tax returns or obtain the annual franchise license unless you change the character of your organization, the purposes for which you were organized, or your method of operation. Any such change should be reported immediately to this office in order that the effect upon your exempt status may be considered.

Your attention is called to the provisions of Title II, Section 1 (d), of the District law under which your exemption will be revoked unless you operate exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, to a substantial extent within the District. Such reference to operations within the District does not include those activities confined solely to the solicitation of funds, or to the situs of its organizational adjuncts, but means the actual dispensing within the District to a substantial extent of the religious, charitable, educational or the other benefits which the organization affords. Also, no part of your net earnings may inure to the benefit of any private individual or shareholder, and no part of your activities is carrying on propaganda, or otherwise attempting to influence legislation.

EXHIBIT 2

- 2 -

You are requested to submit a statement of your actual method of operations both within and outside the District together with a classified statement of receipts, expenditures and disbursements for each taxable year, and a complete statement of the assets and liabilities as of the end of each taxable year. This information must be submitted annually on or before the fifteenth day of the fourth month following the close of the taxable year.

It is requested that you submit promptly copies of any correspondence received in the future from the Internal Revenue Service which changes, renews, clarifies, or proposes to change, renew, or clarify the organization's exempt status for Federal Income Tax purposes.

Very truly yours,

John R. Kissinger
Supervisory Tax Auditor
Income and Sales Tax Section

JRK/mc

